

1996

Myra L. Taylor, Ronald H. Olson, Carol D. Olson,
and Jennifer Van Boerum aka Jennifer Heather
Olson v. American Fire and Casualty Company :
Brief of Appellee

Utah Court of Appeals

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James A. McIntosh; James A. McIntosh & Associates; Attorneys for Appellee.

Jill M. Aggeler; Paul H. Matthews; Kirton & McConkie; Attorneys for Appellant.

Recommended Citation

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UTAH COURT
BRIEF

UTAH
DOCUMENT
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DOCKET NO. 960086-CA

IN THE UTAH COURT OF APPEALS

MYRA L. TAYLOR, RONALD H.
OLSON, CAROL D. OLSON, and
JENNIFER VAN BOERUM aka
JENNIFER HEATHER OLSON

Plaintiffs/Appellees

v.

AMERICAN FIRE AND CASUALTY
COMPANY, an Ohio corporation

Defendant/Appellant

ADDENDUM TO
BRIEF OF APPELLEES

PRIORITY NO. (15)

Appellate Court No. 9600⁸⁶~~68~~-CA

Trial Court Civil No. 930902492

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT,
SALT LAKE COUNTY, JUDGE FRANK G. NOEL

Jill M. Aggeler (5654)
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American Fire and Casualty Company

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1399 South 700 East, #17
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Attorney for Plaintiffs/Appellees Myra L.
Taylor, Ronald H. Olson, Carol D. Olson,
and Jennifer Van Boerum aka Jennifer
Heather Olson

ADDENDUM TABLE OF CONTENTS

EXHIBIT NO.	DESCRIPTION
1	"ORDER PERMITTING APPELLEES TO SUPPLEMENT RECORD ON APPEAL" dated January 3, 1996. Allows Appellees to include the official file and record in the underlying lawsuit in the Court of Judge Timothy R. Hanson, Civil No. 900907125PI.
2	"MINUTE ENTRY" dated June 22, 1995, issued by Judge Frank G. Noel with respect to the hearing held on May 24, 1995, pertaining to both parties' Motions for Summary Judgment.
3	"SUMMARY JUDGMENT" signed by the Honorable Frank G. Noel on September 8, 1995.
4	Miller's STANDARD INSURANCE POLICIES ANNOTATED Vol. I, page 215.
5	HOMEOWNER'S INSURANCE POLICY issued by American Fire and Casualty Company to the Olsons.
6	"COMPLAINT" in the underlying lawsuit. <u>COUNT 5</u> is on pages 9-12 of the said Complaint (S.R. 9-12).
7	Covering pages dated November 16, 1987, from Frank Grant, Plaintiffs' Accident Reconstruction Expert pertaining to the accident in the underlying lawsuit.
8	Statement of <u>MICHELLE PAXTON</u> , taken by Frank Grant on November 3, 1987.
9	Statement of <u>STEPHANIE SMITH</u> , taken by Frank Grant on November 6, 1987.
10	"SUPPLEMENTAL REPORT" dated November 21, 1987, from Frank Grant discussing Jennifer Heather Olson's blood alcohol content of .14 percent.

- 11 "TOXICOLOGY REPORT" dated October 23, 1987, signed by
Bruce Beck at the Public Safety Toxicology Section, showing a
blood alcohol content for Jennifer Heather Olson of .14 percent.
- 12 Certain pages from the "CONSOLIDATED RESPONSES OF
RONALD H. OLSON AND CAROL D. OLSON TO THE
PLAINTIFFS' FIRST SET OF INTERROGATORIES" (S.R. 78,
86, 87, 90, 92, and 96).
- 13 Certain pages from the Deposition of JENNIFER HEATHER
OLSON including S.R. 454, 470-475, 477-492, 513-516.
- 14 Certain pages from the Deposition of HEIDI NELSON including
S.R. 388, 393, 395, 398, and 405.
- 15 Certain pages from the Deposition of KRISTI BRINGHURST
including S.R. 284.
- 16 Certain pages from the Deposition of JENNIFER PIA including
S.R. 307-313.
- 17 Certain pages from the Deposition of SCOTT LEVY including S.R.
346, 358-359, 362.
- 18 Certain pages from the Deposition of MARK MUIR including S.R.
412, 421-422, 425.
- 19 Certain pages from the Deposition of STEVEN KENT JONES
including S.R. 432, 446-449.
- 20 Letter dated July 22, 1992, from H. F. Carlson, Claims Supervisor,
for the American Fire and Casualty Company to Michael N
Martinez, Esq., attorney for the Olsons, acknowledging an
obligation on the part of American Fire to represent the Olsons in
the underlying lawsuit if certain facts could be demonstrated. This
letter is found at R. 100.
- 21 "MINUTE ENTRY" dated September 29, 1992, pertaining to the
final Pretrial Conference held before the Honorable Timothy R.
Hanson establishing policies and procedures to be used at the trial
of the underlying lawsuit. Found at S.R. 162-164.
- 22 "STIPULATION" dated November 19, 1992, and signed by all of
the parties and their counsel in the underlying lawsuit. This
Stipulation sets out the procedures the parties intend to follow at
trial and also pertains to an assignment to Myra L. Taylor of the
Olsons' claims against their Homeowner's insurer in exchange for

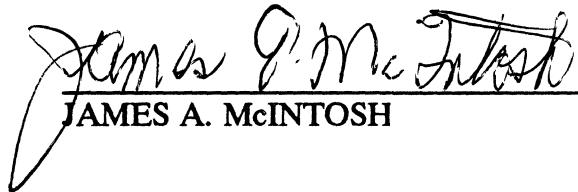
an agreement by the Plaintiffs and USAA not to execute on any of the Olsons' personal assets. This Stipulation is found at S.R. 177-184.

- 23 COURT REPORTER'S TRANSCRIPT of comments made by the Honorable Timothy R. Hanson at the trial held on November 19, 1992, in the underlying lawsuit and explaining Judge Hanson's methodology for reviewing Findings of Fact, Exhibits, Depositions, etc. before arriving at a final decision. This Transcript is found at S.R. 234-243.
- 24 COURT REPORTER'S TRANSCRIPT of the testimony of the Olsons in the underlying lawsuit, the proffer of their counsel Michael N. Martinez and the Court's questioning of each of the three Olsons separately with regard to their understanding of the Stipulation and the Plaintiffs' proposed Findings of Fact, Conclusions of Law, and Final Judgment. This Transcript is found at S.R. 244-249.
- 25 Plaintiffs' proposed "FINDINGS OF FACT AND CONCLUSIONS OF LAW" showing pencilled changes made by the Honorable Timothy R. Hanson. This document is found at S.R. 192-206.
- 26 Plaintiffs' proposed "FINAL JUDGMENT" showing Judge Hanson's pencilled change in the amount of general damages in paragraph 1 on page 2. This document is found at S.R. 207-209.
- 27 Letter dated January 25 1993, from Judge Timothy R. Hanson to James A. McIntosh, Esq., attorney for Myra Taylor, and Michael N. Martinez, Esq., attorney for the Olsons in the underlying lawsuit. This letter pertains to Judge Hanson's review of the evidence, the depositions, transcripts, exhibits, etc. and the changes he made in the Plaintiffs' proposed FINDINGS OF FACT, CONCLUSIONS OF LAW, and FINAL JUDGMENT. This letter directs Plaintiffs' counsel James A. McIntosh to prepare new FINDINGS OF FACT, CONCLUSIONS OF LAW, and a new FINAL JUDGMENT. This document is found at S.R. 190-191.
- 28 "FINDINGS OF FACT AND CONCLUSIONS OF LAW" signed by Judge Timothy R. Hanson on January 27, 1993. This document is found at S.R. 210-224.
- 29 "FINAL JUDGMENT" signed by Judge Timothy R. Hanson on January 27, 1993. This document is found at S.R. 225-227.

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of March 1996 two copies of the above and foregoing "ADDENDUM OF APPELLEES" were hand-delivered to the following:

Jill M. Aggeler, Esq.
Paul H. Matthews, Esq.
KIRTON & McCONKIE
60 East South Temple, Suite 1800
Salt Lake City, UT 84111



JAMES A. McINTOSH


EXHIBIT "1"

2. The Appeals Clerk in the Third Judicial District Court in and for Salt Lake County, State of Utah, is directed to prepare an Index including the supplemented record and to paginate the said supplemented record as directed by Rule 11 of the Utah Rules of Appellate Procedure and by the Clerk of this Court.

3. Both parties may use the supplemented record on appeal in any Briefs, Addenda, or other documents which are filed in this Supreme Court.

DATED this 3rd day of January 1996.

BY THE COURT



JUSTICE

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of January 1996 a true and correct copy of the above and foregoing **ORDER PERMITTING APPELLEES TO SUPPLEMENT RECORD ON APPEAL** was hand-delivered to the following:

Jill M. Aggeler, Esq.
KIRTON & McCONKIE
60 East South Temple, Suite 1800
Salt Lake City, UT 84111



JAMES A. MCINTOSH

EXHIBIT "2"

Myra L. Taylor, Ronald H. Olson,
Carol D. Olson and Jennifer Van Boerum
a/k/a Jennifer Heather Olson,
Plaintiffs,

**American Fire and Casualty Company, an
Ohio Corporation,
Defendants.**

Civil No. 930902492 CN

JUDGE FRANK G. NOEL

The court is of the opinion that the State of Utah recognizes the distinct tort of a parent's failure to properly supervise and control the conduct of a minor child. The homeowner's insurance policy in question covers the circumstances in that portion of plaintiffs' complaint alleging the Olsons' failure to properly supervise and to control the conduct of their minor child. Accordingly, the defendant had a duty to defend the Olsons in the underlying Taylor/Olson lawsuit. The defendant was aware of said lawsuit, was repeatedly requested to defend the Olsons under the terms of the policy but refused to do so. Under these circumstances the defendant is not entitled to collaterally attack the findings of the trial judge wherein it was

determined, after trial, that the Olsons' failure to supervise and properly control the conduct of their minor child was the sole proximate cause of the accident.


Accordingly the court grants the plaintiffs' Motion for Summary Judgment.

The parties are asked to consult with one another to determine if they can agree that the issue of attorney's fees be submitted to the court on an affidavit. If not then the court will notice the matter for an evidentiary hearing regarding attorney's fees.

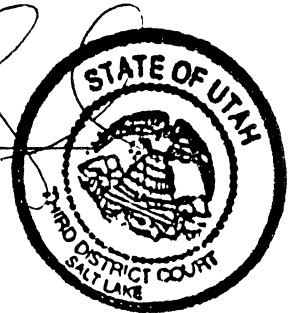
The court will certify this as a final judgment pursuant to Rule 54b of the Utah Rules of Civil Procedure.

Counsel for plaintiffs is to prepare an order consistent with this ruling.

Dated this 22 day of June, 1995.



Frank G. Noel
District Court Judge



MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry, postage prepaid, to the following on this 22 day of June, 1995.

James A. McIntosh
JAMES A. MCINTOSH & ASSOCIATES
Attorney for Plaintiff
Suite 17, Intrade Bldg. South
1399 South 700 East
Salt Lake City, UT 84105

Donald J. Purser
Jill M. Aggeler
PURSER & EDWARDS
Attorney for Defendants
39 Market Street, Suite 300
Salt Lake City, UT 84101-2104

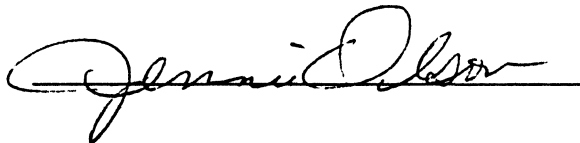
A handwritten signature in cursive script, appearing to read "Jenni Olson", written over a horizontal line.

EXHIBIT "3"

JAMES A. McINTOSH, ESQ. -- No. 2194
JAMES A. McINTOSH & ASSOCIATES P.C.
A Utah Professional Law Corporation
Suite 17, Intrade Bldg. South
1399 South 700 East
Salt Lake City, UT 84105
Telephone: (801) 487-7834

Attorneys for Plaintiffs

FILED IN DISTRICT COURT
THIRD JUDICIAL DISTRICT

SEP 08 1995

Pat Jones
County Clerk

IN THE DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

MYRA L. TAYLOR, RONALD H.
OLSON, CAROL D. OLSON, AND
JENNIFER VAN BOERUM aka
JENNIFER HEATHER OLSON

Plaintiffs

v.

AMERICAN FIRE AND
CASUALTY COMPANY, an Ohio
Corporation

Defendant

SUMMARY JUDGMENT

Civil No. 930902492CN

(Judge Frank G. Noel)

The above-entitled matter having come on regularly for hearing on Wednesday, May 24, 1995, between the hours of 8:30 A.M. and 10:00 A.M. before the Honorable Frank G. Noel pursuant to the Motions for Summary Judgment filed by Plaintiffs and Defendant; the Plaintiffs being represented by the law firm of James A. McIntosh & Associates P.C., appearing through counsel James A. McIntosh; the Defendant being represented by the law firm of Purser, Edwards & Shields, L.L.C., appearing through counsel Jill M. Aggeler; the Court having reviewed the parties' Motions for Summary

Judgment together with the Memoranda filed in connection therewith; the Court having heard arguments of counsel and having taken the matter under advisement; the Court having, on June 22, 1995, signed that certain "Minute Entry," a copy of which is attached to this Summary Judgment as Exhibit "1" and is by reference incorporated herein and made a part hereof; the Court being fully advised in the premises;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS A SUMMARY JUDGMENT AS FOLLOWS:

1. The Plaintiffs' Motion for Summary Judgment is granted.
2. The Defendant's Motion for Summary Judgment is denied.
3. The Homeowners' Insurance Policy ("Policy") issued by the Defendant covers the circumstances in that portion of Plaintiffs' Complaint alleging the Olsons failed to properly supervise and control the conduct of their minor child. The Homeowners' Insurance Policy is attached as Exhibit "1" to that certain document entitled "Plaintiffs' Memorandum of Points and Authorities in Support of Their Motion for Partial Summary Judgment Regarding Insurance Policy Liability," dated January 23, 1995 ("Plaintiffs' Memorandum"), which is by reference incorporated herein and made a part hereof.
4. The Defendant had a duty to defend the Olsons in the underlying Taylor/Olsons' Lawsuit, Civil No. 900907125PI in this Court, a copy of which underlying Complaint is attached to the Plaintiffs' Memorandum as Exhibit "2" and is by reference incorporated herein and made a part hereof. The Defendant was aware of said lawsuit, was repeatedly requested to defend the Olsons under the terms of the Policy but refused to do so.

5. The Plaintiffs are hereby awarded judgment against the Defendant in the amount of one hundred thousand dollars (\$100,000.00) which is the face amount of the said Policy.

6. The Plaintiffs are hereby award judgment against the Defendant for interest from January 27, 1993, the date the underlying judgment was signed by the Honorable Timothy R. Hanson at the rate of twelve percent (12%) per annum on the full amount of the judgment of \$203,794.14 pursuant to the provisions of "SECTION 2 -- ADDITIONAL COVERAGES" on page 13 of the said Policy. Interest will continue at the rate of twelve percent (12%) per annum on the full amount of Judge Hanson's judgment of \$203,794.14 from January 27, 1993, until the Defendant pays or tenders or deposits in Court the said principal amount of \$100,000 together with the amount of eight thousand three hundred forty-five dollars (\$8,345.00) awarded as attorney fees in accordance with paragraph 7 below.

7. The Plaintiffs are hereby awarded judgment against the Defendant for attorney fees which the Olsons incurred in the underlying Taylor/Olsons' lawsuit to their attorney, Michael N. Martinez, Esq., in the amount of five thousand seven hundred seventy-one dollars and twenty-five cents (\$5,771.25) together with interest on said amount of two thousand five hundred seventy-three dollars and seventy-seven cents (\$2,573.77) for a total amount of eight thousand three hundred forty-five dollars (\$8,345.00). This \$8,345.00 will bear interest at the rate of nine and twenty-two hundredths percent (9.22%) per annum from the entry of the judgment until paid.

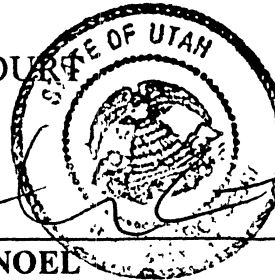
8. Attorney fees requested by Plaintiffs for services rendered by their attorney James A. McIntosh, Esq. in this Court and in the two proceedings in the Courts of Judge Dee V. Benson and Judge David Sam in the United States District Court for the District of Utah will be deferred and decided as part of the Plaintiffs' bad-faith claims in their

Complaint in this Court and no decision is being made as to those fees in this Summary Judgment.

9. This judgment and all portions herein are certified as "final" pursuant to the provisions of Rule 54(b) of the Utah Rules of Civil Procedure. In this connection, the Court expressly finds and determines that there is no just reason for delay and expressly directs the entry of judgment as stated herein.

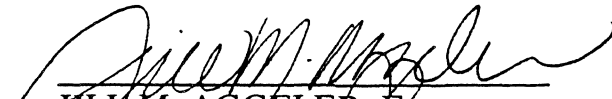
DONE IN OPEN COURT this 8 day of ^{Sep.}~~August~~ 1995.

BY THE COURT



FRANK G. NOEL
District Court Judge

APPROVED AS TO FORM


JILL M. AGGELER, Esq.
Attorney for Defendant

CERTIFICATE OF SERVICE

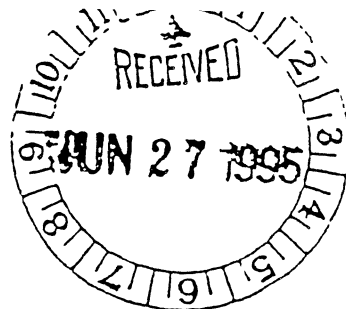
I hereby certify that on the 25th day of August 1995 a true and correct copy of the above and foregoing **SUMMARY JUDGMENT** was hand-delivered to the following:

Jill M. Aggeler, Esq.
KIRTON & McCONKIE
60 East South Temple, Suite 1800
Salt Lake City, UT 84111



JAMES A. McINTOSH

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IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

Myra L. Taylor, Ronald H. Olson,
Carol D. Olson and Jennifer Van Boerum
a/k/a Jennifer Heather Olson,
Plaintiffs,

VS.

American Fire and Casualty Company, an
Ohio Corporation,
Defendants.

MINUTE ENTRY

Civil No. 930902492 CN

JUDGE FRANK G. NOEL

The court has reviewed the parties' motions for summary judgment together with the memos filed in connection therewith, has heard oral argument and after having taking the matter under advisement now rules as follows:

The court is of the opinion that the State of Utah recognizes the distinct tort of a parent's failure to properly supervise and control the conduct of a minor child. The homeowner's insurance policy in question covers the circumstances in that portion of plaintiffs' complaint alleging the Olsons' failure to properly supervise and to control the conduct of their minor child. Accordingly, the defendant had a duty to defend the Olsons in the underlying Taylor/Colson lawsuit. The defendant was aware of said lawsuit, was repeatedly requested to defend the Olsons under the terms of the policy but refused to do so. Under these circumstances the defendant is not entitled to collaterally attack the findings of the trial judge wherein it was

determined, after trial, that the Olsons' failure to supervise and properly control the conduct of their minor child was the sole proximate cause of the accident.


Accordingly the court grants the plaintiffs' Motion for Summary Judgment.

The parties are asked to consult with one another to determine if they can agree that the issue of attorney's fees be submitted to the court on an affidavit. If not then the court will notice the matter for an evidentiary hearing regarding attorney's fees.

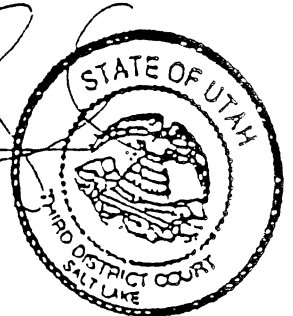
The court will certify this as a final judgment pursuant to Rule 54b of the Utah Rules of Civil Procedure.

Counsel for plaintiffs is to prepare an order consistent with this ruling.

Dated this 22 day of June, 1995.



Frank G. Noel
District Court Judge



MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry, postage prepaid, to the following on this 22 day of June, 1995.

James A. McIntosh
JAMES A. MCINTOSH & ASSOCIATES
Attorney for Plaintiff
Suite 17, Intrade Bldg. South
1399 South 700 East
Salt Lake City, UT 84105

Donald J. Purser
Jill M. Aggeler
PURSER & EDWARDS
Attorney for Defendants
39 Market Street, Suite 300
Salt Lake City, UT 84101-2104

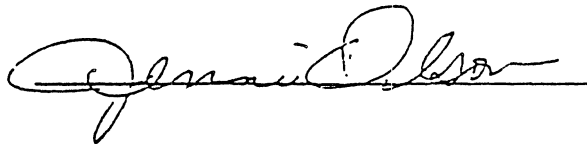
A handwritten signature in dark ink, appearing to read "James A. McIntosh", written over a horizontal line.

EXHIBIT "4"

MILLER'S

STANDARD INSURANCE POLICIES ANNOTATED

by
Susan J. Miller
and
Philip Lefebvre

VOL I

POLICIES

MILLER'S STANDARD INSURANCE POLICIES ANNOTATED

form: HO

HO 00 03 04 91

- 2.2 1b6—c. Arising out of the rental or holding for rental of any part of any premises by an "insured". This exclusion does not apply to the rental or holding for rental of an "insured location".
- (1) On an occasional basis if used only as a residence
 - (2) In part for use only as a residence unless a single family unit is intended for use by the occupying family to lodge more than two roomers or boarders or
 - (3) In part as an office, school studio or private garage.
- 2.2 1c — d. Arising out of the rendering of or failure to render professional services.
- 2.2 1d — e. Arising out of a premises.
- 2.2 1d1 — (1) Owned by an "insured".
- 2.2 1d2 — (2) Rented to an "insured" or
- 2.2 1d3 — (3) Rented to others by an "insured", that is not an "insured location".
- 2.2 1e — f. Arising out of
- 2.2 1e1 — (1) The ownership, maintenance, use loading or unloading of motor vehicles or all other motorized land conveyances including trailers owned or operated by or rented or loaned to an "insured".
- 2.2 1e2 — (2) The entrustment by an "insured" of a motor vehicle or any other motorized land conveyance to any person or
- 2.2 1e3 — (3) Vicarious liability whether or not statutorily imposed for the actions of a child or minor using a conveyance excluded in paragraph (1) or (2) above
- 2.2 1eA — This exclusion does not apply to
- 2.2 1eA1 — (1) A trailer not towed by or carried on a motorized land conveyance
- 2.2 1eA2 — (2) A motorized land conveyance designed for recreational use off public roads not subject to motor vehicle registration and
- 2.2 1eA2a (a) Not owned by an "insured" or
- 2.2 1eA2b (b) Owned by an "insured" and on an "insured location"
- 2.2 1eA3 — (3) A motorized golf cart when used to play golf on a golf course
- 2.2 1eA4 (4) A vehicle or conveyance not subject to motor vehicle registration which is
- 2.2 1eA4a — (a) Used to service an "insured's" residence
- 2.2 1eA4b — (b) Designed for assisting the handicapped or
- 2.2 1eA4c — (c) In dead storage on an "insured location"

- g. Arising out of
- 2.2 1f
- (1) The ownership maintenance use loading or unloading of an excluded watercraft described below 2.2 1f1
 - (2) The entrustment by an "insured" of an excluded watercraft described below to any person or 2.2 1f2
 - (3) Vicarious liability whether or not statutorily imposed for the actions of a child or minor using an excluded watercraft described below 2.2 1f3
- Excluded watercraft are those that are principally designed to be propelled by engine power or electric motor or are sailing vessels, whether owned by or rented to an "insured". This exclusion does not apply to watercraft
- (1) That are not sailing vessels and are powered by
- (a) Inboard or inboard-outdrive engine or motor power of 50 horsepower or less not owned by an "insured" 2.2 1fA1
 - (b) Inboard or inboard-outdrive engine or motor power of more than 50 horsepower not owned by or rented to an "insured" 2.2 1fA2
 - (c) One or more outboard engines or motors with 25 total horsepower or less 2.2 1fA3
 - (d) One or more outboard engines or motors with more than 25 total horsepower if the outboard engine or motor is not owned by an "insured" 2.2 1fA3a
 - (e) Outboard engines or motors of more than 25 total horsepower owned by an "insured" if 2.2 1fA4
 - (i) You acquire them prior to the policy period and 2.2 1fA4a
 - (a) You declare them at policy inception or 2.2 1fA4a1
 - (b) Your intention to insure is reported to us in writing within 45 days after you acquire the outboard engines or motors 2.2 1fA4a2
 - (ii) You acquire them during the policy period 2.2 1fA4b
- This coverage applies for the policy period 2.2 1fA4c
- (2) That are sailing vessels with or without auxiliary power
- (a) Less than 26 feet in overall length 2.2 1fA5
 - (b) 26 feet or more in overall length not owned by or rented to an "insured" 2.2 1fA6

HO 00 03 04 91

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Page 13 of 18

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EXHIBIT "5"

YOUR NEW HOMEOWNERS POLICY



American Fire & Casualty Company

604 Courtland Street, Orlando, Florida 32804

YOUR HOMEOWNERS POLICY QUICK REFERENCE

	DECLARATIONS PAGE	
	Your Name	
	Location of Your Residence	
	Policy Period	
	Coverages	
	Amounts of Insurance	
	Deductible	
		<u>Beginning On Page</u>
	AGREEMENT	1
	DEFINITIONS	1
SECTION I YOUR PROPERTY	COVERAGES	2
	Property Coverages	
	Loss of Use	
	Additional Coverages	
	Debris Removal	
	Trees, Shrubs and Plants	
	Credit Card	
	PERILS INSURED AGAINST	5
	EXCLUSIONS	7
	CONDITIONS	8
	Insurable Interest	
	Duties After Loss	
	Loss Settlement	
	Mortgage Clause	
SECTION II YOUR LIABILITY	COVERAGES	10
	Personal Liability	
	Medical Payments to Others	
	EXCLUSIONS	11
	ADDITIONAL COVERAGES	13
	Claim Expenses	
	First Aid Expenses	
	Damage to Property of Others	
	CONDITIONS	14
	Limit of Liability	
	Duties After Loss	
SECTION I and SECTION II	CONDITIONS	15
	Policy Period	
	Cancellation	
	Non-Renewal	

AFRICAN FIRE AND CASUALTY COMPANY of The Ohio Casualty Group of Insurance Companies

OWNER DECLARATION

POLICY PERIOD
12:01 AM STANDARD TIME AT RESIDENCE PREMISES

POLICY NO
DHA 1078159-C

STATE AGENT
43 31 0104

FROM TO TERM
09-27-86 09-27-87 ONE YEAR

INSURED

RONALD H & CAROL OLSON
1930 LOGAN AVE
SALT LAKE CITY UTAH 84108

AGENT

CARSON SMITH & ASSOCIATES INC
2525 SOUTH MAIN ST SUITE 8
SALT LAKE CITY UT 84115

FIRST MORTGAGEE

MOUNTAIN WEST S&L ASSN
2835 EAST 3300 SOUTH
SALT LAKE CITY UTAH 84109

1ST LOAN NUMBER

2ND LOAN NUMBER

E DESCRIBED RESIDENCE PREMISES IS LOCATED AT THE ABOVE ADDRESS.					ZIP CODE	
					84108	
PROPERTY COVERAGE					LIABILITY COVERAGE	
DWELLING	B. OTHER STRUCTURES	C. PERSONAL PROPERTY	D. LOSS OF USE		E. PERSONAL LIABILITY EACH OCCURRENCE	F. MEDICAL PAYMENTS TO OTHERS EACH PERSON
\$88,500	\$8,850	\$44,250	\$17,700		\$100,000	\$1,000
BASIC PREMIUM	ADDITIONAL PREMIUM				TOTAL PREMIUM	
\$170.00	\$26.00				\$196.00	

TITLE - PROPERTY COVERAGE, IN CASE OF A LOSS WE COVER ONLY THAT PART OF THE LOSS OVER THE DEDUCTIBLE STATED

CURRENT EDITION OF FORMS WILL BE SUBSTITUTED AT EACH RENEWAL DATE FOR THE EARLIER EDITIONS IF REVISED DURING THE PREVIOUS POLICY TERM

50 FLAT ALL PERILS.

PREM GROUP	PROT CLASS	NO OF FAMILIES	TOWN	YEAR CONST	
2	26	03	1	50	

TRUCTION. FRAME.

VERAGE A HAS BEEN INCREASED FROM \$86,500
REFLECT THE INCREASED COST OF CONSTRUCTION IN
JR AREA.

ERE HAS BEEN A DEDUCTIBLE REVISION IN YOUR
ICY. IF YOU DESIRE TO MAINTAIN YOUR PREVIOUS,
VER DEDUCTIBLE, PLEASE CONTACT YOUR AGENT.

* HO-3	04-84	26.00
* HO-300	04-84	
* OC-254	11-84	
* HO-52	04-84	
* HO-322	09-85	
* HO-325	12-85	
* OC-772	11-85	

INSURANCE IS PROVIDED ONLY WITH RESPECT TO THE COVERAGES FOR WHICH A LIMIT OF LIABILITY IS SPECIFIED SUBJECT TO ALL CONDITIONS OF THIS POLICY

James J. Smith SECRETARY *Joseph L. M... ..* PRESIDENT

ILLY REMITTANCE OF THE TOTAL AMOUNT DUE WILL BE
PRECATED.

DAVID H. Smith

AMERICAN FIRE AND CASUALTY COMPANY of The Ohio Casualty Group of Insurance Companies

POLICY NO		ST. TER AGENT		DUE DATE	
1	01078159	25	43 31 0104	09-27-86	

TO:

RONALD H & CAROL OLSON

AYOR OF PREMIUM IS:

MOUNTAIN WEST SEL ASSN

		TOTAL AMOUNT DUE
\$	\$	\$ 196.00

MAKE CHECKS PAYABLE TO, AND RETURN THIS STUB WITH YOUR PAYMENT TO:

AMERICAN FIRE AND CASUALTY COMPANY
136 NORTH THIRD STREET
HAMILTON, OHIO 45025

010781595 433101046 56030000255 00196006 00000000 1111864

**HOMEOWNERS
SPECIAL AMENDATORY ENDORSEMENT**

Form OC-254
(11-84)

1. SECTION I - ADDITIONAL COVERAGES

Credit Card, Fund Transfer Card, Forgery and Counterfeit Money

We increase the amount of this coverage from \$500 to \$1,000 without additional charge.

2. We provide Outboard Motor and Inboard-Outdrive Motor Liability without additional charge.

SECTION II - EXCLUSIONS

Coverage E - Personal Liability and Coverage F - Medical Payments to Others - Section f. Watercraft (1) and (2) are changed to read:

(1) with inboard motor power owned by an **insured**;

(2) with inboard motor power of more than 50 horsepower rented to an **insured**;

Item f. Watercraft (4) is deleted.

RENEWAL PLAN

HO 52
(Ed 4 84)

This policy is changed as follows

1 Policy Period in the Declarations is deleted and replaced as follows

Policy Period 12 01 A M Standard Time at the **residence premises** for _____ months from
to _____ and for successive policy periods as stated below

- 2 If we elect to continue this insurance we will renew this policy if you pay the required renewal premium for each successive policy period subject to our premiums rules and forms then in effect You must pay us prior to the end of the current policy period or else this policy will expire
- 3 If a mortgagee is named in this policy we will continue this insurance for the mortgagee's interest for ten days after written notice of termination to the mortgagee and then this policy will expire

*Entries may be left blank if shown elsewhere in this policy for this coverage

All other provisions of this policy apply

NO SECTION II—LIABILITY COVERAGES FOR HOME DAY CARE BUSINESS

LIMITED SECTION I—PROPERTY COVERAGES FOR
HOME DAY CARE BUSINESS

HO-322
(Ed 9 85)

If an **insured** regularly provides home day care services to a person or persons other than **insureds** and receives monetary or other compensation for such services, that enterprise is a **business** pursuit. Mutual exchange of home day care services, however, is not considered compensation. The rendering of home day care services by an **insured** to a relative of an **insured** is not considered a **business** pursuit.

Therefore, with respect to a home day care enterprise which is considered to be a **business** pursuit, this policy:

1 does not provide Section II—Liability Coverages because **business** pursuits of an **insured** are excluded under exclusion 1 b of Section II—Exclusions.

2 does not provide Section I—Coverage B coverage where other structures are used in whole or in part for **business**.

3 limits coverage for property used on the **residence premises** for the home day care enterprise to \$2,500 because Coverage C—Special Limits of Liability—item 9 imposes that limit on **business** property on the **residence premises**;

4 limits coverage for property used off the **residence premises** for the home day care enterprise to \$250 because Coverage C—Special Limits of Liability—item 10 imposes that limit on **business** property off the **residence premises**.

THIS ENDORSEMENT DOES **NOT** CONSTITUTE A REDUCTION OF COVERAGE

COMMUNICABLE DISEASE EXCLUSION

SECTION II - EXCLUSIONS

The following exclusion is added:

Coverage E - Personal Liability and Coverage F - Medical Payments to Others do not apply to bodily injury or property damage which arises out of the transmission of a communicable disease by an insured.

FULL VALUE CONTENTS COVERAGE ENDORSEMENT

SECTION I

For an additional premium, covered losses to the following property are settled at replacement cost at the time of loss:

- a. Coverage C -- Personal Property;
- b. If covered in this policy, awnings, carpeting, household appliances, outdoor antennas and outdoor equipment, whether or not attached to buildings.

Condition 3. Loss Settlement does not apply to property described in paragraphs a. and b. above.

Personal Property Replacement Cost coverage also applies to articles or classes of property separately described and specifically insured in this policy.

1. PROPERTY NOT ELIGIBLE

Property listed below is not eligible for replacement cost settlement. Any loss will be settled at actual cash value at the time of loss but not more than the amount required to repair or replace.

- a. antiques, fine arts, paintings and similar articles of rarity or antiquity which cannot be replaced.
- b. memorabilia, souvenirs, collectors items and similar articles whose age or history contribute to their value.
- c. articles not maintained in good or workable condition.

d. articles that are outdated or obsolete and are stored or not being used.

e. watercraft, inboard motorboats, outboard motorboats, outboard motors, inboard/outboard motorboats, inboard/outdrive motorboats, houseboats, sailboats, boat accessories and equipment, boat trailers and boat carriers.

2. REPLACEMENT COST

- a. We will pay no more than the least of the following amounts:
 - (1) replacement cost at the time of loss without deduction for depreciation;
 - (2) the full cost of repair at the time of loss;
 - (3) the limit of liability that applies to Coverage C; or
 - (4) any special limits of liability stated in this policy.
- b. When the replacement cost for the entire loss under this endorsement is more than \$500, we will pay no more than the actual cash value for the loss or damage until the actual repair or replacement is complete.
- c. You may make a claim for loss on an actual cash value basis and then make claim within 180 days after the loss for any additional liability in accordance with this endorsement.

All other provisions of this policy apply.

SPECIAL PROVISIONS

HO-300
(Ed. 4-84)
Utah

SECTIONS I AND II—CONDITIONS

5. **Cancellation.** The following is added to paragraphs b(2), (3) and (4):

However, if any one of the following conditions exist at any building that is covered in this policy, we may cancel this policy by letting you know at least 5 days before the date cancellation takes effect.

- (a) The building has been vacant or unoccupied 60 or more consecutive days. This does not apply to:

- (i) seasonal unoccupancy; or
- (ii) buildings in the course of construction, renovation or addition.

Buildings with 65% or more of the rental units or floor area vacant or unoccupied are considered unoccupied under this provision.

- (b) After damage by a covered peril, permanent repairs to the building:

- (i) have not started; and
- (ii) have not been contracted for within 30 days of payment of loss.

- (c) The building has:

- (i) an outstanding order to vacate;
 - (ii) an outstanding demolition order; or
 - (iii) been declared unsafe by governmental authority.
- (d) Fixed and salvageable items have been or are being removed from the building and are not being replaced. This does not apply to removal that is necessary or incidental to any renovation or remodeling.
- (e) Failure to:
- (i) furnish necessary heat, water, sewer service or electricity for 30 consecutive days or more, except during a period of seasonal unoccupancy; or
 - (ii) pay property taxes that are owing and have been outstanding for more than one year following the date due, except that this provision will not apply where you are in a bona fide dispute with the taxing authority regarding payment of such taxes.

All other provisions of this policy apply.

AGREEMENT

We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy.

DEFINITIONS

In this policy, "you" and "your" refer to the "named insured" shown in the Declarations and the spouse if a resident of the same household. "We," "us" and "our" refer to the Company providing this insurance. In addition, certain words and phrases are defined as follows:

1. **"bodily injury"** means bodily harm, sickness or disease, including required care, loss of services and death that results.
2. **"business"** includes trade, profession or occupation.
3. **"Insured"** means you and residents of your household who are:
 - a. your relatives; or
 - b. other persons under the age of 21 and in the care of any person named above.

Under Section II, **"insured"** also means:

 - c. with respect to animals or watercraft to which this policy applies, any person or organization legally responsible for these animals or watercraft which are owned by you or any person included in 3a or 3b above. A person or organization using or having custody of these animals or watercraft in the course of any **business** or without consent of the owner is not an **insured**;
 - d. with respect to any vehicle to which this policy applies:
 - (1) persons while engaged in your employ or that of any person included in 3a or 3b above; or
 - (2) other persons using the vehicle on an **insured location** with your consent.
4. **"Insured location"** means:
 - a. the residence premises;
 - b. the part of other premises, other structures and grounds used by you as a residence and:
 - (1) which is shown in the Declarations; or
 - (2) which is acquired by you during the policy period for your use as a residence;
 - c. any premises used by you in connection with a premises in 4a or 4b above;
 - d. any part of a premises:
 - (1) not owned by an **Insured**; and
 - (2) where an **insured** is temporarily residing;
 - e. vacant land, other than farm land, owned by or rented to an **insured**;
 - f. land owned by or rented to an **insured** on which a one or two family dwelling is being built as a residence for an **insured**;
 - g. individual or family cemetery plots or burial vaults of an **insured**; or
 - h. any part of a premises occasionally rented to an **insured** for other than **business** use.
5. **"occurrence"** means an accident, including exposure to conditions, which results, during the policy period, in:
 - a. **bodily injury**; or
 - b. **property damage**.
6. **"property damage"** means physical injury to, destruction of, or loss of use of tangible property.
7. **"residence employee"** means:
 - a. an employee of an **insured** whose duties are related to the maintenance or use of the **residence premises**, including household or domestic services; or
 - b. one who performs similar duties elsewhere not related to the **business** of an **insured**.

8. "residence premises" mean

- a. the one family dwelling, other structures, and grounds; or
- b. that part of any other building where you reside and which is shown as the "residence premises" in the Declarations.

"Residence premises" also means a two family dwelling where you reside in at least one of the family units and which is shown as the "residence premises" in the Declarations.

SECTION I—PROPERTY COVERAGES

COVERAGE A—Dwelling

We cover:

1. the dwelling on the **residence premises** shown in the Declarations, including structures attached to the dwelling; and
2. materials and supplies located on or next to the **residence premises** used to construct, alter or repair the dwelling or other structures on the **residence premises**.

This coverage does not apply to land, including land on which the dwelling is located.

COVERAGE B—Other Structures

We cover other structures on the **residence premises** set apart from the dwelling by clear space. This includes structures connected to the dwelling by only a fence, utility line, or similar connection.

This coverage does not apply to land, including land on which the other structures are located.

We do not cover other structures:

1. used in whole or in part for business; or
2. rented or held for rental to any person not a tenant of the dwelling, unless used solely as a private garage.

The limit of liability for this coverage will not be more than 10% of the limit of liability that applies to Coverage A. Use of this coverage does not reduce the Coverage A limit of liability.

COVERAGE C—Personal Property

We cover personal property owned or used by an **insured** while it is anywhere in the world. At your request, we will cover personal property owned by:

1. others while the property is on the part of the **residence premises** occupied by an **insured**;
2. a guest or a **residence employee**, while the property is in any residence occupied by an **insured**.

Our limit of liability for personal property usually located at an **insured's** residence, other than the **residence premises**, is 10% of the limit of liability for Coverage C, or \$1000, whichever is greater. Personal property in a newly acquired principal residence is not subject to this limitation for the 30 days from the time you begin to move the property there.

Special Limits of Liability. These limits do not increase the Coverage C limit of liability. The special limit for each numbered category below is the total limit for each loss for all property in that category.

1. \$200 on money, bank notes, bullion, gold other than goldware, silver other than silverware, platinum, coins and medals.
2. \$1000 on securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, passports, tickets and stamps.
3. \$1000 on watercraft, including their trailers, furnishings, equipment and outboard motors.
4. \$1000 on trailers not used with watercraft.
5. \$1000 on grave markers.
6. \$1000 for loss by theft of jewelry, watches, furs, precious and semi-precious stones.
7. \$2000 for loss by theft of firearms.
8. \$2500 for loss by theft of silverware, silver-plated ware, goldware, gold-plated ware and pewterware. This includes flatware, hollowware, tea sets, trays and trophies made of or including silver, gold or pewter.
9. \$2500 on property, on the **residence premises**, used at any time or in any manner for any business purpose.
10. \$250 on property, away from the **residence premises**, used at any time or in any manner for any business purpose.

Property Not Covered. We do not cover

1. articles separately described and specifically insured in this or other insurance,
2. animals, birds or fish;
3. motor vehicles or all other motorized land conveyances. This includes
 - a. equipment and accessories, or
 - b. any device or instrument for the transmitting, recording, receiving or reproduction of sound or pictures which is operated by power from the electrical system of motor vehicles or all other motorized land conveyances, including
 - (1) accessories or antennas, or
 - (2) tapes, wires, records, discs or other media for use with any such device or instrument,while in or upon the vehicle or conveyance
We do cover vehicles or conveyances not subject to motor vehicle registration which are
 - a. used to service an insured's residence, or
 - b. designed for assisting the handicapped,
4. aircraft and parts. Aircraft means any contrivance used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo,
5. property of roomers, boarders and other tenants, except property of roomers and boarders related to an insured;
6. property in an apartment regularly rented or held for rental to others by an insured;
7. property rented or held for rental to others off the residence premises;
8.
 - a. books of account, drawings or other paper records; or
 - b. electronic data processing tapes, wires, records, discs or other software media, containing **business data**. But we do cover the cost of blank or unexposed records and media
9. credit cards or fund transfer cards except as provided in Additional Coverages 6

COVERAGE D—Loss Of Use

The limit of liability for Coverage D is the total limit for all the coverages that follow

1. If a loss covered under this Section makes that part of the **residence premises** where you reside not fit to live in, we cover, at your choice, either of the following. However, if the **residence premises** is not your principal place of residence, we will not provide the option under paragraph b. below

- a. **Additional Living Expense**, meaning any necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living, or
- b. **Fair Rental Value**, meaning the fair rental value of that part of the **residence premises** where you reside less any expenses that do not continue while the premises is not fit to live in

Payment under a. or b. will be for the shortest time required to repair or replace the damage or, if you permanently relocate, the shortest time required for your household to settle elsewhere

2. If a loss covered under this Section makes that part of the **residence premises** rented to others or held for rental by you not fit to live in, we cover the

Fair Rental Value, meaning the fair rental value of that part of the **residence premises** rented to others or held for rental by you less any expenses that do not continue while the premises is not fit to live in

Payment will be for the shortest time required to repair or replace that part of the premises rented or held for rental

3. If a civil authority prohibits you from use of the **residence premises** as a result of direct damage to neighboring premises by a Peril Insured Against in this policy, we cover the Additional Living Expense or Fair Rental Value loss as provided under 1 and 2 above for no more than two weeks

The periods of time under 1, 2 and 3 above are not limited by expiration of this policy

We do not cover loss or expense due to cancellation of a lease or agreement

ADDITIONAL COVERAGES

1. **Debris Removal**. We will pay your reasonable expense for the removal of
 - a. debris of covered property if a Peril Insured Against causes the loss, or
 - b. ash, dust or particles from a volcanic eruption that has caused direct loss to a building or property contained in a building

This expense is included in the limit of liability that applies to the damaged property. If the amount to be paid for the actual damage to the property plus the debris removal expense is more than the limit of liability for the damaged property, an additional 5% of that limit of liability is available for debris removal expense

We will also pay your reasonable expense for the removal of fallen trees from the **residence premises** if

- a. coverage is not afforded under Additional Coverages 3 Trees, Shrubs and Other Plants for the peril causing the loss, or
- b. the tree is not covered by this policy

provided the tree damages covered property and a Peril Insured Against under Coverage C causes the tree to fall. Our limit of liability for this coverage will not be more than \$500 in the aggregate for any one loss.

2. **Reasonable Repairs.** We will pay the reasonable cost incurred by you for necessary repairs made solely to protect covered property from further damage if a Peril Insured Against causes the loss. This coverage does not increase the limit of liability that applies to the property being repaired.

3. **Trees, Shrubs and Other Plants.** We cover trees, shrubs, plants or lawns, on the **residence premises**, for loss caused by the following Perils Insured Against: Fire or lightning, Explosion, Riot or civil commotion, Aircraft, Vehicles not owned or operated by a resident of the **residence premises**, Vandalism or malicious mischief or Theft.

The limit of liability for this coverage will not be more than 5% of the limit of liability that applies to the dwelling, or more than \$500 for any one tree, shrub or plant. We do not cover property grown for **business** purposes.

This coverage is additional insurance.

4. **Fire Department Service Charge.** We will pay up to \$500 for your liability assumed by contract or agreement for fire department charges incurred when the fire department is called to save or protect covered property from a Peril Insured Against. We do not cover fire department service charges if the property is located within the limits of the city, municipality or protection district furnishing the fire department response.

This coverage is additional insurance. No deductible applies to this coverage.

5. **Property Removed.** We insure covered property against *direct loss from any cause while being removed from a premises endangered by a Peril Insured Against* and for no more than 30 days while removed. This coverage does not change the limit of liability that applies to the property being removed.

6. **Credit Card, Fund Transfer Card, Forgery and Counterfeit Money.**

We will pay up to \$500 for

- a. the legal obligation of an **insured** to pay because of the theft or unauthorized use of credit cards issued to or registered in an **insured's** name.

- b. loss resulting from theft or unauthorized use of a fund transfer card used for deposit, withdrawal or transfer of funds issued to or registered in an **insured's** name.

- c. loss to an **insured** caused by forgery or alteration of any check or negotiable instrument and

- d. loss to an **insured** through acceptance in good faith of counterfeit United States or Canadian paper currency.

We do not cover use of a credit card or fund transfer card

- a. by a resident of your household
- b. by a person who has been entrusted with either type of card, or
- c. if an **insured** has not complied with all terms and conditions under which the cards are issued.

All loss resulting from a series of acts committed by any one person or in which any one person is concerned or implicated is considered to be one loss.

We do not cover loss arising out of **business** use or dishonesty of an **insured**.

This coverage is additional insurance. No deductible applies to this coverage.

Defense

- a. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to defend a claim or suit ends when the amount we pay for the loss equals our limit of liability.
- b. If a suit is brought against an **insured** for liability under the Credit Card or Fund Transfer Card coverage, we will provide a defense at our expense by counsel of our choice.
- c. We have the option to defend at our expense an **insured** or an **insured's** bank against any suit for the enforcement of payment under the Forgery coverage.

7. **Loss Assessment.** We will pay up to \$1000 for your share of any loss assessment charged during the policy period against you by a corporation or association of property owners. This only applies when the assessment is made as a result of each direct loss to the property, owned by all members collectively, caused by a Peril Insured Against under Coverage A—Dwelling, other than earthquake or land shock waves or tremors before, during or after a volcanic eruption.

This coverage applies only to loss assessments charged against you as owner or tenant of the **residence premises**.

We do not cover loss assessments charged against you or a corporation or association of property owners by any governmental body.

8. **Collapse.** We insure for direct physical loss to covered property involving collapse of a building or any part of a building caused only by one or more of the following:

- a. Perils Insured Against in Coverage C—Personal Property. These perils apply to covered building and personal property for loss insured by this additional coverage;
- b. hidden decay;
- c. hidden insect or vermin damage;
- d. weight of contents, equipment, animals or people;
- e. weight of rain which collects on a roof; or

f. use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

Loss to an awning, fence, patio, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock is not included under items b, c, d, e, and f unless the loss is a direct result of the collapse of a building.

Collapse does not include settling, cracking, shrinking, bulging or expansion.

This coverage does not increase the limit of liability applying to the damaged covered property.

SECTION I—PERILS INSURED AGAINST

COVERAGE A—DWELLING and COVERAGE B—OTHER STRUCTURES

We insure against risks of direct loss to property described in Coverages A and B only if that loss is a physical loss to property; however, we do not insure loss:

- 1. involving collapse, other than as provided in Additional Coverage 8;
- 2. caused by:
 - a. freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing. This exclusion applies only while the dwelling is vacant, unoccupied or being constructed unless you have used reasonable care to:
 - (1) maintain heat in the building; or
 - (2) shut off the water supply and drain the system and appliances of water;
 - b. freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a:
 - (1) fence, pavement, patio or swimming pool;
 - (2) foundation, retaining wall or bulkhead; or
 - (3) pier, wharf or dock;
 - c. theft in or to a dwelling under construction, or of materials and supplies for use in the construction until the dwelling is finished and occupied;
 - d. vandalism and malicious mischief or breakage of glass and safety glazing materials if the dwelling has been vacant for more than 30 consecutive days immediately before the

loss. A dwelling being constructed is not considered vacant;

- e. constant or repeated seepage or leakage of water or steam over a period of weeks, months or years from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance;
- f. (1) wear and tear, marring, deterioration;
(2) inherent vice, latent defect, mechanical breakdown;
(3) smog, rust, mold, wet or dry rot;
(4) smoke from agricultural smudging or industrial operations;
(5) release, discharge or dispersal of contaminants or pollutants;
(6) settling, cracking, shrinking, bulging or expansion of pavements, patios, foundations, walls, floors, roofs or ceilings; or
(7) birds, vermin, rodents, insects or domestic animals.

If any of these cause water damage not otherwise excluded, from a plumbing, heating, air conditioning or automatic fire protective sprinkler system or household appliance, we cover loss caused by the water including the cost of tearing out and replacing any part of a building necessary to repair the system or appliance. We do not cover loss to the system or appliance from which this water escaped.

3. excluded under Section I—Exclusions.

Under items 1 and 2, any ensuing loss to property described in Coverages A and B not excluded or excepted in this policy is covered.

COVERAGE C—PERSONAL PROPERTY

We insure for direct physical loss to the property described in Coverage C caused by a peril listed below unless the loss is excluded in Section I—Exclusions

1. Fire or lightning.

2. Windstorm or hail.

This peril does not include loss to the property contained in a building caused by rain, snow, sleet, sand or dust unless the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening.

This peril includes loss to watercraft and their trailers, furnishings, equipment, and outboard motors, only while inside a fully enclosed building.

3. Explosion.

4. Riot or civil commotion.

5. Aircraft, including self-propelled missiles and spacecraft

6. Vehicles.

7. Smoke, meaning sudden and accidental damage from smoke

This peril does not include loss caused by smoke from agricultural smudging or industrial operations.

8. Vandalism or malicious mischief.

9. Theft, including attempted theft and loss of property from a known place when it is likely that the property has been stolen

This peril does not include loss caused by theft

- a committed by an insured;
- b in or to a dwelling under construction, or of materials and supplies for use in the construction until the dwelling is finished and occupied, or
- c from that part of a **residence premises** rented by an **insured** to other than an **insured**.

This peril does not include loss caused by theft that occurs off the **residence premises** of

- a property while at any other residence owned by, rented to, or occupied by an **insured**, except while an **insured** is temporarily living there. Property of a student who is an **insured** is covered while at a residence away from home if the student has been there at any time during the 45 days immediately before the loss,
- b watercraft, including their furnishings, equipment and outboard motors, or
- c trailers and campers

10. Falling objects

This peril does not include loss to property contained in a building unless the roof or an outside wall of the building is first damaged by a falling object. Damage to the falling object itself is not included.

11. Weight of ice, snow or sleet which causes damage to property contained in a building

12. Accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance

This peril does not include loss

- a to the system or appliance from which the water or steam escaped;
- b caused by or resulting from freezing except as provided in the peril of freezing below; or
- c on the **residence premises** caused by accidental discharge or overflow which occurs off the **residence premises**.

13. Sudden and accidental tearing apart, cracking, burning or bulging of a steam or hot water heating system, an air conditioning or automatic fire protective sprinkler system, or an appliance for heating water

We do not cover loss caused by or resulting from freezing under this peril.

14. Freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a household appliance

This peril does not include loss on the **residence premises** while the dwelling is unoccupied unless you have used reasonable care to

- a maintain heat in the building; or
- b shut off the water supply and drain the system and appliances of water.

15. Sudden and accidental damage from artificially generated electrical current.

This peril does not include loss to a tube, transistor or similar electronic component.

16. Damage by glass or safety glazing material which is part of a building, storm door or storm window

This peril does not include loss on the **residence premises** if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant.

17. Volcanic Eruption other than loss caused by earthquake, land shock waves or tremors

SECTION I—EXCLUSIONS

1. We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.
 - a. **Ordinance or Law**, meaning enforcement of any ordinance or law regulating the construction, repair, or demolition of a building or other structure, unless specifically provided under this policy.
 - b. **Earth Movement**, meaning earthquake including land shock waves or tremors before, during or after a volcanic eruption; landslide; mudflow; earth sinking, rising or shifting; unless direct loss by:
 - (1) fire;
 - (2) explosion; or
 - (3) breakage of glass or safety glazing material which is part of a building, storm door or storm window;ensues and then we will pay only for the ensuing loss.

This exclusion does not apply to loss by theft.
 - c. **Water Damage**, meaning:
 - (1) flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind;
 - (2) water which backs up through sewers or drains; or
 - (3) water below the surface of the ground, including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure.Direct loss by fire, explosion or theft resulting from water damage is covered.
 - d. **Power Failure**, meaning the failure of power or other utility service if the failure takes place off the **residence premises**. But, if a Peril Insured Against ensues on the **residence premises**, we will pay only for that ensuing loss.
 - e. **Neglect**, meaning neglect of the insured to use all reasonable means to save and preserve property at and after the time of a loss.
 - f. **War**, including undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, destruction or seizure or use for a military purpose, and including any consequence of any of these. Discharge of a nuclear weapon will be deemed a warlike act even if accidental.
 - g. **Nuclear Hazard**, to the extent set forth in the Nuclear Hazard Clause of Section I—Conditions.
 - h. **Intentional Loss**, meaning any loss arising out of any act committed:
 - (1) by or at the direction of an insured; and
 - (2) with the intent to cause a loss.
2. We do not insure for loss to property described in Coverages A and B caused by any of the following. However, any ensuing loss to property described in Coverages A and B not excluded or excepted in this policy is covered.
 - a. **Weather conditions**. However, this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph 1. above to produce the loss;
 - b. **Acts or decisions**, including the failure to act or decide, of any person, group, organization or governmental body;
 - c. **Faulty, inadequate or defective**:
 - (1) planning, zoning, development, surveying, siting;
 - (2) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - (3) materials used in repair, construction, renovation or remodeling; or
 - (4) maintenance;of part or all of any property whether on or off the **residence premises**.

SECTION I—CONDITIONS

1. **Insurable Interest and Limit of Liability.** Even if more than one person has an insurable interest in the property covered, we will not be liable in any one loss:
 - a. to the **insured** for more than the amount of the **insured's** interest at the time of loss; or
 - b. for more than the applicable limit of liability.
2. **Your Duties After Loss.** In case of a loss to covered property, you must see that the following are done:
 - a. give prompt notice to us or our agent;
 - b. notify the police in case of loss by theft;
 - c. notify the credit card or fund transfer card company in case of loss under Credit Card or Fund Transfer Card coverage;
 - d. (1) protect the property from further damage;
(2) make reasonable and necessary repairs to protect the property; and
(3) keep an accurate record of repair expenses;
 - e. prepare an inventory of damaged personal property showing the quantity, description, actual cash value and amount of loss. Attach all bills, receipts and related documents that justify the figures in the inventory;
 - f. as often as we reasonably require:
 - (1) show the damaged property;
 - (2) provide us with records and documents we request and permit us to make copies; and
 - (3) submit to questions under oath and sign and swear to them;
 - g. send to us, within 60 days after our request, your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief:
 - (1) the time and cause of loss;
 - (2) the interest of the **insured** and all others in the property involved and all liens on the property;
 - (3) other insurance which may cover the loss;
 - (4) changes in title or occupancy of the property during the term of the policy;
 - (5) specifications of damaged buildings and detailed repair estimates;
 - (6) the inventory of damaged personal property described in 2e above;
 - (7) receipts for additional living expenses incurred and records that support the fair rental value loss; and
 - (8) evidence or affidavit that supports a claim under the Credit Card, Fund Transfer Card, Forgery and Counterfeit Money coverage, stating the amount and cause of loss.
3. **Loss Settlement.** Covered property losses are settled as follows:
 - a. (1) Personal property;
(2) Awnings, carpeting, household appliances, outdoor antennas and outdoor equipment, whether or not attached to buildings; and
(3) Structures that are not buildings;
at actual cash value at the time of loss but not more than the amount required to repair or replace.
 - b. Buildings under Coverage A or B at replacement cost without deduction for depreciation, subject to the following:
 - (1) If, at the time of loss, the amount of insurance in this policy on the damaged building is 80% or more of the full replacement cost of the building immediately before the loss, we will pay the cost to repair or replace, after application of deductible and without deduction for depreciation, but not more than the least of the following amounts:
 - (a) the limit of liability under this policy that applies to the building;
 - (b) the replacement cost of that part of the building damaged for like construction and use on the same premises; or
 - (c) the necessary amount actually spent to repair or replace the damaged building.

- (2) If, at the time of loss, the amount of insurance in this policy on the damaged building is less than 80% of the full replacement cost of the building immediately before the loss, we will pay the greater of the following amounts, but not more than the limit of liability under this policy that applies to the building:
- (a) the actual cash value of that part of the building damaged; or
 - (b) that proportion of the cost to repair or replace, after application of deductible and without deduction for depreciation, that part of the building damaged, which the total amount of insurance in this policy on the damaged building bears to 80% of the replacement cost of the building.
- (3) To determine the amount of insurance required to equal 80% of the full replacement cost of the building immediately before the loss, do not include the value of:
- (a) excavations, foundations, piers or any supports which are below the undersurface of the lowest basement floor;
 - (b) those supports in (a) above which are below the surface of the ground inside the foundation walls, if there is no basement; and
 - (c) underground flues, pipes, wiring and drains.
- (4) We will pay no more than the actual cash value of the damage unless:
- (a) actual repair or replacement is complete; or
 - (b) the cost to repair or replace the damage is both:
 - (i) less than 5% of the amount of insurance in this policy on the building; and
 - (ii) less than \$1000.
- (5) You may disregard the replacement cost loss settlement provisions and make claim under this policy for loss or damage to buildings on an actual cash value basis. You may then make claim within 180 days after loss for any additional liability on a replacement cost basis.
4. **Loss to a Pair or Set.** In case of loss to a pair or set we may elect to:
- a. repair or replace any part to restore the pair or set to its value before the loss; or
 - b. pay the difference between actual cash value of the property before and after the loss.
5. **Glass Replacement.** Loss for damage to glass caused by a Peril Insured Against will be settled on the basis of replacement with safety glazing materials when required by ordinance or law.
6. **Appraisal.** If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the **residence premises** is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss.
- Each party will:
- a. pay its own appraiser; and
 - b. bear the other expenses of the appraisal and umpire equally.
7. **Other Insurance.** If a loss covered by this policy is also covered by other insurance, we will pay only the proportion of the loss that the limit of liability that applies under this policy bears to the total amount of insurance covering the loss.
8. **Suit Against Us.** No action can be brought unless the policy provisions have been complied with and the action is started within one year after the date of loss.
9. **Our Option.** If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may repair or replace any part of the damaged property with like property.
10. **Loss Payment.** We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss and:
- a. reach an agreement with you;
 - b. there is an entry of a final judgment; or
 - c. there is a filing of an appraisal award with us.
11. **Abandonment of Property.** We need not accept any property abandoned by an insured.

12. Mortgage Clause.

The word "mortgagee" includes trustee.

If a mortgagee is named in this policy, any loss payable under Coverage A or B will be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

- a. notifies us of any change in ownership, occupancy or substantial change in risk of which the mortgagee is aware;
- b. pays any premium due under this policy on demand if you have neglected to pay the premium; and
- c. submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so. Policy conditions relating to Appraisal, Suit Against Us and Loss Payment apply to the mortgagee.

If the policy is cancelled or not renewed by us, the mortgagee will be notified at least 10 days before the date cancellation or nonrenewal takes effect.

If we pay the mortgagee for any loss and deny payment to you:

- a. we are subrogated to all the rights of the mortgagee granted under the mortgage on the property; or
- b. at our option, we may pay to the mortgagee the whole principal on the mortgage plus any accrued interest. In this event, we will receive a full assignment and transfer of the mortgage and all securities held as collateral to the mortgage debt.

Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

13. **No Benefit to Bailee.** We will not recognize any assignment or grant any coverage that benefits a person or organization holding, storing or moving property for a fee regardless of any other provision of this policy.

14. Nuclear Hazard Clause.

- a. "Nuclear Hazard" means any nuclear reaction, radiation, or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these.
- b. Loss caused by the nuclear hazard will not be considered loss caused by fire, explosion, or smoke, whether these perils are specifically named in or otherwise included within the Perils Insured Against in Section I.
- c. This policy does not apply under Section I to loss caused directly or indirectly by nuclear hazard, except that direct loss by fire resulting from the nuclear hazard is covered.

15. **Recovered Property.** If you or we recover any property for which we have made payment under this policy, you or we will notify the other of the recovery. At your option, the property will be returned to or retained by you or it will become our property. If the recovered property is returned to or retained by you, the loss payment will be adjusted based on the amount you received for the recovered property.

16. **Volcanic Eruption Period.** One or more volcanic eruptions that occur within a 72-hour period will be considered as one volcanic eruption.

SECTION II—LIABILITY COVERAGES

COVERAGE E — Personal Liability

If a claim is made or a suit is brought against an insured for damages because of **bodily injury** or **property damage** caused by an **occurrence** to which this coverage applies, we will:

1. pay up to our limit of liability for the damages for which the insured is legally liable; and
2. provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to settle or defend ends when the amount we pay for damages resulting from the **occurrence** equals our limit of liability.

COVERAGE F — Medical Payments To Others

We will pay the necessary medical expenses that are incurred or medically ascertained within three years from the date of an accident causing **bodily injury**. Medical expenses means reasonable charges for medical, surgical, x-ray, dental, ambulance, hospital, professional nursing, prosthetic devices and funeral services. This coverage does not apply to you or regular residents of your household except **residence employees**. As to others, this coverage applies only:

1. to a person on the insured location with the permission of an insured; or

2. to a person off the insured location, if the bodily injury:
 - a. arises out of a condition on the insured location or the ways immediately adjoining;
 - b. is caused by the activities of an insured;
 - c. is caused by a residence employee in the course of the residence employee's employment by an insured; or
 - d. is caused by an animal owned by or in the care of an insured.

SECTION II—EXCLUSIONS

1. **Coverage E — Personal Liability and Coverage F — Medical Payments to Others** do not apply to **bodily injury or property damage:**

- a. which is expected or intended by the insured;
- b. arising out of **business** pursuits of an insured or the rental or holding for rental of any part of any premises by an insured.

This exclusion does not apply to:

- (1) activities which are usual to non-business pursuits; or
- (2) the rental or holding for rental of an insured location:
 - (a) on an occasional basis if used only as a residence;
 - (b) in part for use only as a residence, unless a single family unit is intended for use by the occupying family to lodge more than two roomers or boarders; or
 - (c) in part, as an office, school, studio or private garage;
- c. arising out of the rendering of or failure to render professional services;
- d. arising out of a premises:
 - (1) owned by an insured;
 - (2) rented to an insured; or
 - (3) rented to others by an insured;that is not an insured location;
- e. arising out of:
 - (1) the ownership, maintenance, use, loading or unloading of motor vehicles or all other motorized land conveyances, including trailers, owned or operated by or rented or loaned to an insured;
 - (2) the entrustment by an insured of a motor vehicle or any other motorized land conveyance to any person; or

- (3) statutorily imposed vicarious parental liability for the actions of a child or minor using a conveyance excluded in paragraph (1) or (2) above.

This exclusion does not apply to:

- (1) a trailer not towed by or carried on a motorized land conveyance.
- (2) a motorized land conveyance designed for recreational use off public roads, not subject to motor vehicle registration and:
 - (a) not owned by an insured; or
 - (b) owned by an insured and on an insured location.
- (3) a motorized golf cart when used to play golf on a golf course.
- (4) a vehicle or conveyance not subject to motor vehicle registration which is:
 - (a) used to service an insured's residence;
 - (b) designed for assisting the handicapped; or
 - (c) in dead storage on an insured location.
- f. arising out of:
 - (1) the ownership, maintenance, use, loading or unloading of a watercraft described below;
 - (2) the entrustment by an insured of a watercraft described below to any person; or
 - (3) statutorily imposed vicarious parental liability for the actions of a child or minor using a watercraft described below.

Watercraft:

- (1) with inboard or inboard-outdrive motor power owned by an insured;
- (2) with inboard or inboard-outdrive motor power of more than 50 horsepower rented to an insured;

(3) that is a sailing vessel with or without auxiliary power, 26 feet or more in length owned by or rented to an **insured**; or

(4) powered by one or more outboard motors with more than 25 total horsepower if the outboard motor is owned by an **insured**. But, outboard motors of more than 25 total horsepower are covered for the policy period if:

(a) you acquire them prior to the policy period and:

(i) you declare them at policy inception; or

(ii) your intention to insure is reported to us in writing within 45 days after you acquire the outboard motors.

(b) you acquire them during the policy period.

This exclusion does not apply while the watercraft is stored.

g. arising out of:

(1) the ownership, maintenance, use, loading or unloading of an aircraft;

(2) the entrustment by an **insured** of an aircraft to any person; or

(3) statutorily imposed vicarious parental liability for the actions of a child or minor using an aircraft.

An aircraft means any contrivance used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo.

h. caused directly or indirectly by war, including undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, destruction or seizure or use for a military purpose, and including any consequence of any of these. Discharge of a nuclear weapon will be deemed a warlike act even if accidental.

Exclusions d., e., f., and g. do not apply to **bodily injury to a residence employee** arising out of and in the course of the residence employee's employment by an **insured**.

2. **Coverage E — Personal Liability**, does not apply to:

a. liability:

(1) for your share of any loss assessment charged against all members of an association, corporation or community of property owners;

(2) under contract or agreement. However, this exclusion does not apply to written contracts:

(a) that directly relate to the ownership, maintenance or use of an **insured location**; or

(b) where the liability of others is assumed by the **insured** prior to an occurrence;

unless excluded in (1) above or elsewhere in this policy:

b. **property damage** to property owned by the **insured**;

c. **property damage** to property rented to, occupied or used by or in the care of the **insured**. This exclusion does not apply to **property damage** caused by fire, smoke or explosion;

d. **bodily injury** to any person eligible to receive any benefits:

(1) voluntarily provided; or

(2) required to be provided;

by the **insured** under any:

(1) workers' compensation law;

(2) non-occupational disability law; or

(3) occupational disease law;

e. **bodily injury or property damage** for which an **insured** under this policy:

(1) is also an **insured** under a nuclear energy liability policy or

(2) would be an **insured** under that policy but for the exhaustion of its limit of liability.

A nuclear energy liability policy is one issued by:

(1) American Nuclear Insurers;

(2) Mutual Atomic Energy Liability Underwriters;

(3) Nuclear Insurance Association of Canada;

or any of their successors; or

f. **bodily injury** to you or an **insured** within the meaning of part a. or b. of "**insured**" as defined.

3. Coverage F—Medical Payment Others, does not apply to **bodily injury**:

a. to a **residence employee** if the **bodily injury**:

- (1) occurs off the **insured location**; and
- (2) does not arise out of or in the course of the **residence employee's** employment by an **insured**;

b. to any person eligible to receive benefits:

- (1) voluntarily provided, or
- (2) required to be provided;

under any

- (1) workers' compensation law;

(2) non-occupational disability law; or

(3) occupational disease law;

c. from any:

- (1) nuclear reaction;
- (2) nuclear radiation, or
- (3) radioactive contamination;

all whether controlled or uncontrolled or however caused; or

(4) any consequence of any of these

d. to any person, other than a **residence employee** of an **insured**, regularly residing on any part of the **insured location**.

SECTION II—ADDITIONAL COVERAGES

We cover the following in addition to the limits of liability:

1. Claim Expenses. We pay:

- a. expenses we incur and costs taxed against an **insured** in any suit we defend;
- b. premiums on bonds required in a suit we defend, but not for bond amounts more than the limit of liability for Coverage E. We need not apply for or furnish any bond;
- c. reasonable expenses incurred by an **insured** at our request, including actual loss of earnings (but not loss of other income) up to \$50 per day, for assisting us in the investigation or defense of a claim or suit;
- d. interest on the entire judgment which accrues after entry of the judgment and before we pay or tender, or deposit in court that part of the judgment which does not exceed the limit of liability that applies;
- e. prejudgment interest awarded against the **insured** on that part of the judgment we pay. If we make an offer to pay the applicable limit of liability, we will not pay any prejudgment interest based on that period of time after the offer.

2. First Aid Expenses. We will pay expenses for first aid to others incurred by an **insured** for **bodily injury** covered under this policy. We will not pay for first aid to you or any other **insured**.

3. Damage to Property of Others. We will pay, at replacement cost, up to \$500 per occurrence for **property damage** to property of others caused by an **insured**.

We will not pay for **property damage**:

- a. to the extent of any amount recoverable under Section I of this policy;
- b. caused intentionally by an **insured** who is 13 years of age or older,
- c. to property owned by an **insured**;
- d. to property owned by or rented to a tenant of an **insured** or a resident in your household, or
- e. arising out of:
 - (1) **business pursuits**;
 - (2) any act or omission in connection with a premises owned, rented or controlled by an **insured**, other than the **insured location**; or
 - (3) the ownership, maintenance, or use of aircraft, watercraft or motor vehicles or all other motorized land conveyances

This exclusion does not apply to a motorized land conveyance designed for recreational use off public roads, not subject to motor vehicle registration and not owned by an **insured**.

4. Loss Assessment. We will pay up to \$1000 for your share of any loss assessment charged during the policy period against you by a corporation or association of property owners, when the assessment is made as a result of:

- a. each occurrence to which Section II of this policy would apply;

- b liability for each act of a director, officer or trustee in the capacity as a director, officer or trustee, provided

(1) the director, officer or trustee is elected by the members of a corporation or association of property owners, and

(2) the director, officer or trustee serves without deriving any income from the exercise of duties which are solely on behalf of a corporation or association of property owners

This coverage applies only to loss assessments charged against you as owner or tenant of the residence premises.

We do not cover loss assessments charged against you or a corporation or association of property owners by any governmental body

Section II — Coverage E — Personal Liability
Exclusion 2 a (1) does not apply to this coverage

SECTION II—CONDITIONS

1. **Limit of Liability.** Our total liability under Coverage E for all damages resulting from any one occurrence will not be more than the limit of liability for Coverage E as shown in the Declarations. This limit is the same regardless of the number of **Insureds**, claims made or persons injured

Our total liability under Coverage F for all medical expense payable for **bodily injury** to one person as the result of one accident will not be more than the limit of liability for Coverage F as shown in the Declarations

2. **Severability of Insurance.** This insurance applies separately to each **insured**. This condition will not increase our limit of liability for any one occurrence.

3. **Duties After Loss.** In case of an accident or occurrence, the **Insured** will perform the following duties that apply. You will help us by seeing that these duties are performed

- a. give written notice to us or our agent as soon as is practical, which sets forth

- (1) the identity of the policy and **insured**;
(2) reasonably available information on the time, place and circumstances of the accident or occurrence; and
(3) names and addresses of any claimants and witnesses,

- b. promptly forward to us every notice, demand, summons or other process relating to the accident or occurrence;

- c. at our request, help us

- (1) to make settlement,
(2) to enforce any right of contribution or indemnity against any person or organization who may be liable to an **insured**;
(3) with the conduct of suits and attend hearings and trials
(4) to secure and give evidence and obtain the attendance of witnesses

- d. under the coverage — Damage to Property of Others — submit to us within 60 days after the loss, a sworn statement of loss and show the damaged property, if in the **Insured's** control,

- e. the **Insured** will not, except at the **Insured's** own cost, voluntarily make payment, assume obligation or incur expense other than for first aid to others at the time of the **bodily injury**.

4. **Duties of an Injured Person—Coverage F—Medical Payments to Others.**

The injured person or someone acting for the injured person will

- a. give us written proof of claim, under oath if required, as soon as is practical, and
b. authorize us to obtain copies of medical reports and records

The injured person will submit to a physical exam by a doctor of our choice when and as often as we reasonably require

5. **Payment of Claim—Coverage F—Medical Payments to Others.** Payment under this coverage is not an admission of liability by an **insured** or us

6. **Suit Against Us.** No action can be brought against us unless there has been compliance with the policy provisions

No one will have the right to join us as a party to any action against an **insured**. Also, no action with respect to Coverage E can be brought against us until the obligation of the **insured** has been determined by final judgment or agreement signed by us

7. **Bankruptcy of an Insured.** Bankruptcy or insolvency of an **insured** will not relieve us of our obligations under this policy

8. **Other Insurance — Coverage E — Personal Liability.** This insurance is excess over other valid and collectible insurance except insurance written specifically to cover as excess over the limits of liability that apply in this policy

SECTIONS I AND II—CONDITIONS

1. **Policy Period.** This policy applies only to loss in Section I or **bodily injury or property damage** in Section II, which occurs during the policy period.

2. **Concealment or Fraud.** We do not provide coverage for an **insured** who has:

- a. intentionally concealed or misrepresented any material fact or circumstance, or
- b. made false statements or engaged in fraudulent conduct;

relating to this insurance.

3. **Liberalization Clause.** If we adopt a revision which would broaden the coverage under this policy without additional premium within 60 days prior to or during the policy period, the broadened coverage will immediately apply to this policy.

4. **Waiver or Change of Policy Provisions.**

A waiver or change of a provision of this policy must be in writing by us to be valid. Our request for an appraisal or examination will not waive any of our rights.

5. **Cancellation.**

- a. You may cancel this policy at any time by returning it to us or by letting us know in writing of the date cancellation is to take effect.
- b. We may cancel this policy only for the reasons stated below by letting you know in writing of the date cancellation takes effect. This cancellation notice may be delivered to you, or mailed to you at your mailing address shown in the Declarations.

Proof of mailing will be sufficient proof of notice.

(1) When you have not paid the premium, we may cancel at any time by letting you know at least 10 days before the date cancellation takes effect.

(2) When this policy has been in effect for less than 60 days and is not a renewal with us, we may cancel for any reason by letting you know at least 10 days before the date cancellation takes effect.

(3) When this policy has been in effect for 60 days or more, or at any time if it is a renewal with us, we may cancel:

- (a) if there has been a material misrepresentation of fact which if known to us would have caused us not to issue the policy; or
- (b) if the risk has changed substantially since the policy was issued.

This can be done by letting you know at least 30 days before the date cancellation takes effect.

(4) When this policy is written for a period of more than one year, we may cancel for any reason at anniversary by letting you know at least 30 days before the date cancellation takes effect.

c. When this policy is cancelled, the premium for the period from the date of cancellation to the expiration date will be refunded pro rata.

d. If the return premium is not refunded with the notice of cancellation or when this policy is returned to us, we will refund it within a reasonable time after the date cancellation takes effect.

6. **Non-Renewal.** We may elect not to renew this policy. We may do so by delivering to you, or mailing to you at your mailing address shown in the Declarations, written notice at least 30 days before the expiration date of this policy. Proof of mailing will be sufficient proof of notice.

7. **Assignment.** Assignment of this policy will not be valid unless we give our written consent.

8. **Subrogation.** An **insured** may waive in writing before a loss all rights of recovery against any person. If not waived, we may require an assignment of rights of recovery for a loss to the extent that payment is made by us.

If an assignment is sought, an **insured** must sign and deliver all related papers and cooperate with us.

Subrogation does not apply under Section II to Medical Payments to Others or Damage to Property of Others.

9. **Death.** If any person named in the Declarations or the spouse, if a resident of the same household, dies:

a. we insure the legal representative of the deceased but only with respect to the premises and property of the deceased covered under the policy at the time of death;

b. **insured** includes:

(1) any member of your household who is an **insured** at the time of your death, but only while a resident of the **residence premises**; and

(2) with respect to your property, the person having proper temporary custody of the property until appointment and qualification of a legal representative.

EXHIBIT "6"

902320114
JAMES A. MCINTOSH, ESQ. -- No. 2194
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IN THE DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

MYRA L. TAYLOR

Plaintiff

vs.

RONALD H. OLSON, CAROL D. OLSON,
AND JENNIFER HEATHER OLSON

Defendants

COMPLAINT

Civil No. 90090712511

(Judge _____)

COUNT 1

("NEGLIGENT USE AND OPERATION OF A MOTOR VEHICLE")

1. On October 17, 1987, ("accident date") the defendant Ronald H. Olson was the owner of a 1974 Volkswagen, two-door sedan, green in color ("Volkswagen"). Mr. Olson had purchased the said Volkswagen from a previous owner Daniel Park Lake. On the said October 17, 1987, the Volkswagen was not registered in the state of Utah and was uninsured.

2. On the said accident date the said Ronald H. Olson was married to the defendant Carol D. Olson and was living with his wife and family at 1930 Logan Avenue, Salt Lake City, Utah, 84108.

000001

On the said accident date, the defendant Jennifer Heather Olson was sixteen years of age, having been born on April 2, 1971.

3. On the said accident date, the defendant Jennifer Heather Olson ("Heather") was driving the said Volkswagen at approximately 11:55 P.M. on Yalecrest Avenue (1015 South in Salt Lake City, Utah) at its intersection with 1900 East ("accident scene"). At the said time and place the said defendant Heather was intoxicated and was driving the Volkswagen with a blood alcohol content of approximately .14 grams in violation of § 41-6-44, Utah Code Annotated, 1953, as amended.

4. A few minutes prior to the time and place described in paragraph 3 above, said defendant Heather was involved in a "hit and run" accident in an area less than one mile from the said accident scene.

5. At approximately 11:55 P.M. on the said accident date and at the accident scene, the plaintiff Myra L. Taylor was driving her 1984 Subaru 640 station wagon ("Subaru") in a northerly direction along 1900 East Street and in a careful and prudent manner.

6. On or about the said 11:55 P.M. on the said accident date and at the accident scene, the defendant Heather negligently, carelessly, recklessly, improperly, unlawfully and illegally ("negligence") operated her Volkswagen thereby causing a collision with the Subaru being driven by the plaintiff.

7. As a direct and proximate cause of the said defendant's negligence, the plaintiff was then and there seriously and permanently injured both internally and externally. She suffered bruises, contusions, lacerations, shock, headache, muscle spasms,

numbness in her joints and members, scarring, strains, fractures, and other damages and personal injury so as to render the plaintiff partially and permanently disabled for the balance of her life. The plaintiff has suffered a loss of the quality of life and enjoyment of life she experienced prior to October 17, 1987, and has also suffered mental anguish, emotional pain and suffering and other mental and emotional trauma. The plaintiff is entitled to be awarded general damages in the amount of \$500,000 for these personal injuries.

8. As a direct and proximate cause of the said defendant's negligence, the plaintiff sustained a loss and impairment of earning capacity which will continue for the balance of the plaintiff's working life. The plaintiff is entitled to be compensated for the loss of this earning capacity in the amount of \$250,000.

9. As a direct and proximate cause of the said defendant's negligence as described above, the plaintiff has been forced to seek medical and surgical care and attention and has incurred sums of money for doctors, surgeons, and hospital bills; and will continue to incur sums for said bills; that the exact amount of the said bills has not been determined at this time; but will be determined and known by the time of the trial of this matter; and the plaintiff requests leave to amend her complaint to plead the said medical costs and expenses at that time.

10. As a direct and proximate cause of the said defendant's negligence as described above, the plaintiff has lost sums of money which she might otherwise have earned in her employment; that she

has been required to take time off from her employment to receive medical attention and treatment for the injuries sustained as a result of the negligence of the defendant Heather as described above, and also for the time to convalescence from the said injury; has incurred sums of money to pay for domestic help to assist the plaintiff in maintaining her household and the raising of ten (10) children during the time of her convalescence from the said personal injuries described above; that the exact amount of loss of money from her employment and the amounts paid for the domestic assistance is not known at this time, but will become known by the time of the trial in this matter, and the plaintiff requests leave to amend her complaint when the said damages become known.

11. As a direct and proximate cause of the defendant's negligence as described above, the plaintiff's motor vehicle was demolished and thereby rendered inoperable. The said motor vehicle was owned jointly by the plaintiff and her husband Wayne C. Taylor. The said Wayne C. Taylor has assigned any interest he might have in damages to the said motor vehicle to the plaintiff Myra L. Taylor herein.

12. The Volkswagen Heather was driving at the accident scene and on the accident date and at the time indicated was in violation of several safety statutes which have been enacted by the state of Utah and other local governing bodies; that the operation of the said Volkswagen without being registered or insured also constitutes negligence on the part of the said defendant Heather.

WHEREFORE, the plaintiff demands judgment against the defendant Jennifer Heather Olson on this COUNT 1 as follows:

1. For the sum of \$500,000 general damages.
2. For the sum of \$250,000 loss of earning capacity.
3. For the amount of special damages incurred by the plaintiff for medical, hospital, doctors, prescriptions and other expenses and charges described in this complaint.
4. For the amount of special damages incurred by the plaintiff for loss of wages, cost of domestic help, and the other out-of-pocket expenses described above.
5. Together with interest on all said amounts described hereinabove at the highest legal rate both before and after judgment; together with costs of court and such other relief the court deems appropriate.

COUNT 2

("PUNITIVE DAMAGES FOR HEATHER'S WILFUL AND MALICIOUS MISCONDUCT")

13. The plaintiff incorporates by reference all the allegations in COUNT 1 into this COUNT 2.

14. The conduct of the defendant Heather in driving a motor vehicle without registration and which was uninsured, in being in an intoxicated condition at the time of the accident, in having been involved in a "hit and run" collision within a few minutes of the accident with Myra L. Taylor; and in otherwise disregarding the rights and safety of the said Myra L. Taylor in the manner in which the said Heather drove her Volkswagen, was wilful, malicious, wanton, and intentional ("malicious misconduct").

15. As a direct and proximate cause of the malicious misconduct of the said defendant Heather as described above, the plaintiff sustained the personal injuries, property damage, and other damages more fully described in COUNT 1 above.

16. Because of the malicious misconduct on the part of the said defendant Heather, the plaintiff is entitled to punitive damages against the said defendant.

WHEREFORE, the plaintiff demands judgment against the defendant Heather on this COUNT 2 as follows:

1. For all of the damages requested in the prayer in COUNT 1.

2. For punitive damages in an amount to be determined at the time of the trial in this matter.

3. For interest on the said amount of punitive damages at the highest legal rate allowed by law both before and after judgment.

COUNT 3

("STATUTORY LIABILITY OF RONALD H. OLSON FOR HEATHER'S MISCONDUCT")

17. The plaintiff incorporates by reference all the allegations in the preceding counts into this COUNT 3.

18. Section 41-2-115, Utah Code Annotated, 1953, as amended, provides that any negligence or wilful misconduct of a minor younger than eighteen (18) years of age when operating a motor vehicle upon a highway is imputed to the person who has signed the application of the minor for a permit or license. The said section further provides the person signing the application for a permit

or a license is jointly and severally liable with the minor for any damages caused by the negligent or wilful misconduct.

19. At the time of the negligence and malicious and wilful misconduct as described in COUNTS 1 and 2 above, the defendant Ronald H. Olson had signed the application for a permit or license of the defendant minor Jennifer Heather Olson. Pursuant to § 41-2-115 the said Ronald H. Olson is jointly and severally liable with Heather for any and all of the damages claimed in COUNTS 1 and 2 above.

20. Section 41-2-116, Utah Code Annotated, 1953, as amended, provides that the owner of a motor vehicle causing or knowingly permitting a minor younger than eighteen (18) years of age to operate the vehicle upon a highway or a person who gives or furnishes the motor vehicle to the minor, are each jointly and severally liable with the minor for any damages caused by the negligence of the minor in operating the vehicle.

21. The defendant Ronald H. Olson is jointly and severally liable with his minor daughter Heather pursuant to § 41-2-116 for any damages negligently caused by the said minor as set forth more fully in COUNT 1 above.

WHEREFORE, the plaintiff demands judgment against the defendants Ronald H. Olson and Jennifer Heather Olson jointly and severally on this COUNT 3 for all of the damages requested in COUNTS 1 and 2 above.

COUNT 4

("LIABILITY OF RONALD H. OLSON AND CAROL D. OLSON FOR
NEGLIGENT ENTRUSTMENT OF MOTOR VEHICLE TO THEIR MINOR DAUGHTER
HEATHER")

22. The plaintiff incorporates by reference all the allegations in the preceding counts into this COUNT 4.

23. The defendants Ronald H. Olson and Carol D. Olson are the parents of the defendant Jennifer Heather Olson. On October 17, 1987, the said parents were living in the same household with the said minor child. On the said date the said parents improperly permitted their minor daughter to use the Volkswagen automobile which was under the control of the said parents. At the said time, the parents knew or should have known their minor daughter intended to or was likely to use the motor vehicle and to conduct herself in an activity and in a manner as to create an unreasonable risk of harm to others.

24. The said parents had previously known or should have known prior to the said accident date about Heather's drinking intoxicating beverages; however, the said parents failed to take adequate precautions or to properly instruct their minor child about the dangers of driving while under the influence of alcohol.

25. The parents further failed to take the necessary precautions to see that their minor child would not take the Volkswagen automobile on the highways in an unregistered condition and without the vehicle insurance required by the statutes of the state of Utah.

26. The conduct of the parents in entrusting the motor vehicle to the minor child under the circumstances set forth above in this complaint constitute negligence for which the parents are liable for any damages caused by the said minor child.

27. The said parents are liable for all the damages claimed by the plaintiff in the previous counts in this complaint.

WHEREFORE, the plaintiff demands judgment against the three defendant and each of them jointly and severally in this COUNT 4 for the relief requested in the previous counts in this complaint.

COUNT 5

("LIABILITY OF RONALD H. OLSON AND CAROL D. OLSON FOR FAILURE TO PROPERLY SUPERVISE AND CONTROL THE CONDUCT OF THEIR MINOR CHILD HEATHER")

28. The plaintiff incorporates by reference all the allegations in the preceding counts into this COUNT 5.

29. As parents of the said minor child Heather, the defendants Ronald H. Olson and Carol D. Olson had a duty to supervise and control the conduct of the said minor child so as to prevent the minor child from intentionally harming others or from so conducting herself as to create an unreasonable risk of bodily harm to them.

30. The said parents knew or had reason to know that they had the ability to control Heather and they knew or should have known of the necessity and opportunity for exercising such control. The parents knew the automobile did not contain current valid registration as required by Utah statutes nor was the Volkswagen automobile insured for personal injury or property damage to others

as required by Utah statutes.

31. The parents knew the minor child had driven the car without registration and without insurance on previous occasions; however, the parents did not exercise the required supervision and control to stop Heather from using it on the accident date. Rather, they allowed the minor child to have access to the keys to the said automobile and to otherwise be able to use and operate the motor vehicle.

32. The parents also knew that on prior occasions as well as on the accident date the minor child Heather had been using license plates from her older sister Heidi's automobile, the said use being in violation of the state statutes pertaining to motor vehicles. Notwithstanding this knowledge, the said parents did not do anything to stop this practice and thereby permitted the minor child to take the Volkswagen on the public streets and highways in the state of Utah with an improper registration and without adequate insurance.

33. The parents knew or should have known the minor child had been consuming alcoholic beverages for a period of time prior to the accident date. The parents also knew the minor child consorted with other friends and acquaintances who were accustomed to drinking alcoholic beverages when they were together. The parents knew or should have known their minor child Heather had driven previously after having taken alcoholic beverages.

34. Notwithstanding this knowledge of Heather's drinking habits, the parents allowed Heather to have access to the Volkswagen which had invalid license plates, lacked adequate

insurance, and under circumstances where the parents knew or should have known Heather was attending a party where intoxicating beverages were going to be consumed and knew or should have known that Heather would be driving the motor vehicle after consuming the said intoxicating beverages.

35. The parents knew that they had the ability to control their minor daughter's access to and use of the said Volkswagen, and also knew the necessity for exercising the said control; however, they neglected to so control or supervise Heather to prevent her from using the said Volkswagen under the circumstances set forth in this count and other counts in this complaint.

36. The parents knew or should have known their minor daughter Heather had not had sufficient driving experience to be driving the Volkswagen on October 17, 1987, under the circumstances described in this complaint without adult supervision and control; yet the parents neglected to provide this adult supervision and control, thereby resulting in the accident described more fully in COUNT 1 above.

37. The parents were negligent in failing to retain sufficient control and discipline over their minor daughter Heather and in failing to provide adequate supervision for Heather to insure Heather would not take the Volkswagen automobile under the circumstances set forth in this count and other counts in this complaint.

38. This lack of control and supervision on the part of the parents constitutes negligence on their part.

39. The said parent's negligence contributed as a proximate and direct cause to the accident on October 17, 1987, as described more fully in COUNT 1 of this complaint. As a direct and proximate result of this negligence on the part of the parents, the plaintiff sustained the damages which she claims in the preceding counts in this complaint.

WHEREFORE, the plaintiff demands judgment against the three defendants and each of them jointly and severally on this COUNT 5 for the relief requested in the foregoing counts in this complaint.

DATED this 5th day of December, 1990.

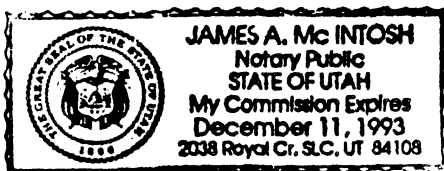
JAMES A. MCINTOSH & ASSOCIATES P.C.

Myra L. Taylor
MYRA L. TAYLOR

James A. McIntosh
JAMES A. MCINTOSH
Attorney for Plaintiff

STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

On the 5th day of December, 1990, personally appeared before me MYRA L. TAYLOR, who being first duly sworn, did depose and say that she has read the above and foregoing Complaint, knows the contents thereof, that the same are true of her own knowledge, except as to matters therein alleged upon information and belief and, as to those matters, she believes them to be true.




James A. McIntosh
NOTARY PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of December, 1990, a true and correct copy of the above and foregoing COMPLAINT was hand delivered to the following:

Michael N. Martinez, Esq.
349 South 200 East, Suite 100
Salt Lake City, UT 84111



JAMES A. MCINTOSH

EXHIBIT "7"

Frank Grant

4821 South 1395 East • Salt Lake City, Utah 84117 • Phone (801) 277-7085

November 16, 1987

Jim McIntosh
Attorney at Law
1399 South 700 East
Salt Lake City, Utah 84105

Re: Myra L. Taylor

This accident occurred when a car eastbound on Yalecrest Ave. driven by Jennifer Heather Olson passed a yield sign and struck the left front of a car northbound on 1900 East driven by Myra L. Taylor.

In addition to the initial impact on the right front of the Olson car and the left front of the Taylor car, additional damage was sustained in a secondary impact to the right side of the Olson car and to the left side of the Taylor car. The impact then forced the Taylor car to the right where it hit head-on into a tree.

Both 1900 East and Yalecrest Ave. are asphalt two-lane roads. There was a yield sign in place and clearly visible controlling traffic on Yalecrest Ave. The sight distance is restricted by shrubbery on the southwest corner of the intersection. This shrubbery extends from the sidewalk to the house on the southwest corner. The speed limit on both streets was posted at 25 MPH.

The accident occurred at about 11:55 P.M. It was dark with no street lights. The weather was clear and the road was dry. There were no roadway defects that would have any bearing on the accident.

Post impact analysis indicates an impact speed of 39 MPH on the Olson car and an impact speed of 33 MPH on the Taylor car. There was no indication of application of brakes on the part of either driver prior to impact.

Due to the shrubbery obstructing the view, both drivers



Accident Analyst

would have a clear view of the other for about 1.18 seconds prior to impact. The average time required for perception and reaction is about 1.5 seconds. Under these circumstances, neither driver would have the time or the distance to have taken any successful evasive action. In order for Taylor to have been able to stop in time she would have to have been traveling at less than 15 MPH. At the time the Olson car came into view the Taylor car was about 56 feet away. This would not allow her time to perceive, react and skid to a stop at any speed greater than about 15 MPH.

In my opinion, excessive speed of the Taylor car was not a contributing factor in the cause of this accident.

There was no indication of any vehicle defects on either car. Witnesses stated that both cars had headlights on at the time of impact.

Witnesses stated that they detected evidence of the use of alcohol by Jennifer Olson. Due to the fact that Olson was a juvenile and there is possible additional charges pending against her, the City Police Department is reluctant to disclose the results of a blood alcohol test performed on Olson shortly after the accident.

The license plates on the 1974 Volkswagen driven by Jennifer Olson (945 ARV) were registered to a 1986 Suzuki owned by Heidi Olson.

The car driven by Jennifer Olson was involved in a traffic incident on Guardsman Way at Sunnyside Ave. a few minutes before, this accident happened with a vehicle driven by Michelle Paxton. Olson made a left turn in front of Paxton. The damage was slight but Olson did not stop. Paxton was following the Olson car at the time of this accident in an attempt to identify the driver.

Jennifer Olson was cited for failure to yield the right of way and hit and run as a result of her actions at Sunnyside Ave. and Guardsman Way. She was also cited for failure to yield the right of way, no drivers license,

Jim McIntosh

page three

no insurance and improper registration. Her car was impounded.

Jennifer Heather Olson does have a valid drivers license which expires on April 2, 1991. She has no traffic violation of record as of November 13, 1987.

In my opinion, the sole cause of this accident was the actions of Jennifer H. Olson in failing to comply with the yield sign as required in UCA Section 41-6-74.10 (b). She was also traveling at an excessive rate of speed of about 14 MPH over the posted speed limit and failing to reduce speed when approaching an intersection.

A handwritten signature in cursive script, reading "Frank Grant". The signature is written in dark ink and has a fluid, connected style.

Frank Grant

Encl.

Traffic incident report Case # 87-97547
Statements of Michelle Paxton, Gary Knowles, Jason
Boren, Stephanie Smith and Officer Louie Numiz
Photos of accident site
Photos of Taylor vehicle
Scale map

EXHIBIT "8"

Frank Grant

4821 South 1395 East • Salt Lake City, Utah 84117 • Phone (801) 277-7085

10/87

November 3, 1987

James McIntosh

Re: Myra Taylor

Statement of MICHELLE PAXTON, 1704 Herbert Ave. Salt Lake City, Utah.

Q. Michelle, I think your mother told you my name is Frank Grant.

A. Uh huh.

Q. I'm a private investigator looking into this accident.

A. Uh huh.

Q. I understand you were involved with that same car.

A. Uh huh.

Q. A little bit earlier?

A. Right.

Q. Where was that?

A. That was on 8th South and I think it's Guardsman Way. I think that's the street it was. Do you want me to tell you what happened?

Q. Sure.

A. Well, I just turned right on 9th South and so I was headed north and the girl was headed south but she was turning east. Okay so she was turning left and the light was green so I had the right of way and she didn't yield for me. She just kept, she just went right on through. I could tell she wasn't going to stop so I put on my brakes and she, we both just kind of hit, you know.

Q. Not very hard, though?

A. No, not very hard but I mean I couldn't tell how hard she hit me and she just took off. She didn't stop and I turned around and honked and she didn't stop. I didn't know what she had done to my car, the damage or anything. All I knew is she had hit me so I followed her and was honking and she wouldn't stop. She was pretty well down the street and then she turned up and then she turned up and was going east up the



Accident Analyst

Complete Accident Investigation & Reconstruction Service

the street. We couldn't have been going more than 35 but I got halfway up the block and she was at the top of the block and the Subaru was headed north and she didn't yield.

Q. I see. Did you ever talk to this young lady, this Jennifer Olsen?

A. No, huh uh.

Q. Never talked to her at all?

A. No, but I know who she is. I never talked to her that night because she took off.

Q. You stopped at the scene I assume?

A. Right and I ran in and called the police.

Q. You think she was doing around 35 up through there.

A. That's what the policeman told me. I had no idea. I was so frustrated I didn't know what I was doing. She hit my car, you know. She just was leaving.

Q. How badly was she hurt?

A. I really don't know because when they pulled her out of the car I was talking with the policeman so I don't know. I know that she has been wearing a neck brace. I know there was some injuries to her. The first thing I did after I saw the accident, I ran up to the Subaru and I could tell she wasn't really in very good shape. I said, "Are you okay?" She said, "I don't think so." She was bleeding and everything.

Q. Did you ever see the Subaru before the--?

A. Oh! I saw it coming.

Q. You saw it coming?

A. I knew there was going to be an accident. I mean I was far enough behind her, I could see it coming, yeah.

Q. Could you see it's headlights, the Subaru?

A. Yeah, that's how I saw it.

Q. Were both of them on or just one?

A. I don't remember. There was another person with me in the car. He might remember.

Q. Who was that?

A. Jason Boren. But I know that's how I did notice it. I could see the lights.

Q. How could I get a hold of Jason?

A. Hiw number is 532 2683.

Q. Is that Boren?

A. Yes and he was with me the entire time.

Q. Did you ever get close enough to the lady in the VW to tell whether or not you could smell any alcohol?

A. I, well, I mean no but I could tell there was something definitely something wrong with her. This has nothing to do with it but I had seen her the night before drunk driving.

Q. Oh huh.

A. Because she goes to, I had seen her at the High School football game and she was drunk and I told my friends and they said, "Heather, do you want us to drive you home?" and she said, "No". So she got in her car and drove away drunk.

Q. Now, this was on a different occasion?

A. That was two days before. This was Thursday.

Q. This was on a Thursday you are talking about now?

A. That she had been drunk driving.

Q. And this accident happened on Saturday?

A. Right and I know that there is a girl who was driving by who was also at the scene and was Heather's friend but she didn't see the accident happen. She was there when they pulled her out of the car and she told me she did smell alcohol.

Q. Do you know who that was?

A. Her name is Stephanie Smith but I'm not sure of her phone number because it's unlisted but I could get it for you if you want.

EXHIBIT "9"

Frank Grant

4821 South 1395 East • Salt Lake City, Utah 84117 • Phone (801) 277-7085



11/87

November 6, 1987

Jim McIntosh

Re: Myra Taylor

Statement of STEPHANIE SMITH, 1212 Princeton Ave. Salt Lake City, Utah. *583-1111*

Q. Stephanie, my name is Frank Grant. I'm an accident investigator.

A. Uh huh.

Q. Did you know the girls in this accident?

A. Uh huh, I knew both of them.

Q. Okay.

A. Just a minute, the one girl I went to Jr. High with. The one that got in the accident.

Q. Yes.

A. And I thought it was her and I pulled over and it was her and then I talked to Shelly, the girl she hit sooner because I go to school with her. She just told me what had happened.

Q. Who is Shelly?

A. Shelly Paxton, Michelle Paxton.

Q. Okay, I'm with you.

A. She was the girl that Heather had hit earlier.

Q. Yes.

A. On Guardsman, I think it was.

Q. How well do you know Heather?

A. Well, I was friends with her, like three years ago but I haven't really been since.

Q. Did you talk to her at the accident scene?

A. A little bit, I tried to but she kind of was hysterical.

Q. Hysterical from what, do you know?

A. I guess just the accident. I think she had been drinking too.

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Q. Could you smell it on her?

A. Yeah, you could kind of smell it in the area.

Q. Do you know where she had been that night?

A. I don't know where she had been. I think she had been at a party or something.

Q. Do you have any idea where that party might have been?

A. No, I don't. I'm sorry.

Q. How long after the accident do you think before you got there?

A. Oh, not very long at all because the only other people there was a guy in the Isuzu Trooper that I guess had seen Heather back a ways so he followed her to make sure she got home and then Michelle Paxton and the person on the front lawn it happened on was the only persons there.

Q. So it must have been just a few seconds after it happened, then?

A. Just a few seconds, I think.

Q. Anybody with you?

A. Yeah, there were. There were three boys with me.

Q. Did they know Heather at all?

A. Yeah, they did. Well, two of them did, I mean one of them did. One went to Jr. High with me. The other two I just met but the one, one of the boys I was with knew her better than I did. He had kept in touch with her more than I did.

Q. Had either you or the boys you were with seen her earlier that evening?

A. No, I don't think so, huh uh.

Q. Does Heather drink quite a bit?

A. Well, I don't know but I think she might because when we played their high school, when we played Highland, at their game, I talked to her after the game and she had been drinking.

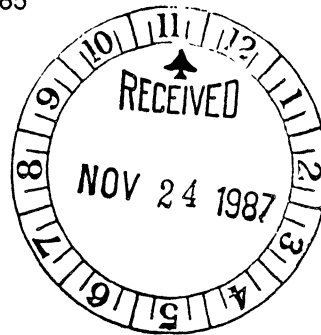
EXHIBIT "10"

Frank Grant

4821 South 1395 East • Salt Lake City, Utah 84117 • Phone (801) 277-7085

November 21, 1987

Jim McIntosh
Attorney at Law
1399 South 700 East
Salt Lake City, Utah 84105



Re: Myra Taylor

SUPPLEMENTAL REPORT

Results of a blood alcohol test administered at the direction of the police shortly after the accident indicated a alcohol level of .14% in Jennifer Olson. This indicates that she was under the influence of alcohol at the time of the accident.

UCA Section 41-6-44 states that any level .08% or above a person is presumed to be under the influence.

The high alcoholic content in Olson at the time could very well account for her failure to observe the Paxton car on Sunnyside Avenue, her failure to stop at the scene of the first accident, her obvious attempt to flee before being identified and her failure to use due care when approaching the yield sign at the intersection of Yalecrest Avenue and 1900 East where she was involved in the second accident with Taylor.

It was rumored that Jennifer Olson had attended a party at a private residence that evening. I would suggest that the location of this party be investigated to determine if alcoholic beverages were served to Jennifer Olson. If so who was responsible for allowing Jennifer, who is only 16 years of age, to get in such an intoxicated state. It is inconceivable that she would not display obvious symptoms of intoxication with a blood alcohol content of .14%.

Accident Analyst

Complete Accident Investigation & Reconstruction Service

Jim McIntosh

page two

Information from Salt Lake City Prosecutor Sheryl Luke indicates that due to the fact that Jennifer Olson has already been charged with failure to yield the right of way in this accident would preclude the filing of the additional charge of driving under the influence of alcohol.

Jennifer Olson's actions on the night of October 17, 1987 indicates gross negligence and a complete disregard for the safety of others.

A handwritten signature in cursive script that reads "Frank Grant". The ink is dark and the signature is fluid, with a prominent loop at the end of the last name.

Frank Grant

EXHIBIT "11"

Norman H. Bangerter
Governor



STATE OF UTAH
DEPARTMENT OF HEALTH
STATE HEALTH LABORATORY
PUBLIC SAFETY TOXICOLOGY SECTION
44 Medical Drive, Salt Lake City, Utah 84113

TOXICOLOGY REPORT

Agency: SALT LAKE CITY P.D.

Laboratory No. L87-1319

Suspect(s): OLSEN, JENNIFER

Your Agency Case No. 87-97534

Officer: MUNIEZ, L.

LABORATORY FINDINGS:

Blood Alcohol: 0.14 percent (w/v) ethanol.

Analyzed by Bruce Beck

Bruce Beck

Sworn and Subscribed to before me this 23 day of October, 19 87.

Eric Sinclair
Notary Public

LOG CARD - CI

CASE 87-097534

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INCDNT  ! RECEIVED      ! TIME ENTER  ! TIME ASCN  ! TIME ARV  ! TIME CLEAR!
0309    ! 10/17/87          ! 23:56       ! 23:58      ! 00:00     ! 03:27     !
ADDRESS                                ! CITY ! APT      ! BEAT      !
1015S          AVE 1900 E          ST  ! SL      ! 123       !
NCIC          ! CMP POS ! CMP ID  ! DISP POS  ! DISP ID  ! PRIMARY ID!
5400 TA W/INJ ! 11     ! 75C    ! 01        ! 47G      ! G93       !
REPORTING PERSON ! ADDRESS                                ! RES PHONE !
LARRY/911      !                                     !           !
BUS PHONE  ! HOW RCVD ! UNITS ! DEPT  ! PRIORITY ! SUPP      ! SIR SEQ   !
          ! T        ! 2     ! P     ! 1        !           ! 8639     !
LOCATION      ! PREMIS INFO ! GRID  ! JURSTCN ! PRIOR ACT !
1015S 1900E !          ! EE16D2 ! SLP      !           !
INIT UNIT   ! BACKUP 1   ! BACKUP 2 ! BACKUP 3 ! BACKUP 4   !
117 23:58 !           !         !         !         !
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LOG CARD COMMENTS - CC

CASE 87-097534

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! {REPORTED ADDRESS:1015 S 1900 E ST, SL OCCURRED:23:56} F.D. EN //172
! ARRIVED 00:01 ///2 ALPHA CONDITION ....NIL CAR TOW AT 00:15...26E ...BLOOD
! TECH PAGED 00:27....26E... ///172 CLEARED 00:33
-----
! II-FO TIME- AGE UNIT-/INC- ST COMMENTS-----
! 10-01 03:27 SLP- 117/0309 IN
! 10-01 02:18 SLP- 117/0309 BZ AT RECORDS
! 10-01 02:13 SLP- 117/0309 BZ EN RECORDS
! 10-01 01:36 SLP- 117/0309 BZ AT LDS HOSP
! 10-01 01:24 SLP- 117/0309 BZ EN LDS HOSP
! 10-01 00:58 SLP- 161/0309 BZ AT LDS BLOOD DRAW
! 10-01 00:44 SLP- 161/0309 BZ EN LDS BLOOD DRAW
! 10-01 00:42 SLP- 190/0309 IN
! 10-01 00:14 SLP- 161/0309 AT
! 10-01 00:14 SLP- 117/0309 AT
! 10-01 23:58 SLP- 161/0309 EN N 21S MAIN
! 10-01 23:58 SLP- 117/0309 EN 693ANA SILO 545 S STATE PRK LOT
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TRAFFIC INCIDENT REPORT - TR

CASE 87-097534

OFFENSE	!	NCIC	!	SECONDARY OFFENSE	!	DATE	!	CASE NO.	!
	!		!		!	REPORTED	!		!
FILE ACCIO	!		!		!	10/17/87	!	87-097534	!
IRRENCE									!
		1900 E							!
N		!	EVIDENCE	!	PREMISE				!
E	DAY	!	REPORT?	!					!
56	SAT	!	NO	!					!
	PHOTO		OTHER	!	STATE REPORT?				!
				!	YES				!

OFFICER INFORMATION FIELD - OF

CASE 87-097534

!	REPORTING OFFICER	!	ASSISTING OFFICERS ID NO./DIV.	!
!	MUNIZ	!		!
!	CLEARANCE:	!	AGE GROUP:	!
!	EXCEPT? UNF? ARREST?	!	ADULT? JUVENILE?	!
!		!		!
IRDS		!	COMPUTER ENTRY ID	!
	TIME	!		!
	08:42	!	51AR	!

! ONE OF THE DRIVERS.

! R/O CONTACTED THE FATHER OF THE VICTIM, MR. RONALD H. OLSEN, AND
! INFORMED HIM OF THE SITUATION. R/O THEN CONTACTED THE DRIVER, JENNIFER
! OLSEN, 4/2/71, R/O THEN INFORMED THE DRIVER, WHILE HER FATHER WAS PRESENT,
! OF HER RIGHTS AND THE IMPLIED CONSENT LAW. THE VICTIM STATED THAT SHE
! UNDERSTOOD HER RIGHTS AND WOULD CONSENT TO THE BLOOD DRAW.

! THE BLOOD TEST WAS TAKEN AT 01:22 10/18/87 AT THE LDS HOSPITAL E.R. THE
! BLOOD WAS DRAWN BY BLOOD TECH. RANDY WILLIAMS. AFTER THE TEST WAS TAKEN,
! R/O OBSERVED THE BLOOD SAMPLES BE PLACED INTO THE STATE EVIDENCE ENVELOPE
! AND OBSERVED THE EVIDENCE BEING SEALED. R/O THEN PLACED R/O'S IBM ON THE
! SEAL.

! NO OTHER ACTIONS BY R/O.

OFFICER INFORMATION FIELD - OF CASE 87-097534

! ID NO./DIV	! REPORTING OFFICER	! ASSISTING OFFICERS ID NO./DIV.
! F37E	! HOLMES, D.W.	
! REPORT STATUS	! CLEARANCE:	! AGE GROUP:
! CASE CLOSED?	! EXCEPT? UNF? ARREST?	! ADULT? JUVENILE?
! YES	!	!
! RECEIVED IN RECORDS		! COMPUTER ENTRY ID
! DATE	TIME	!
! 10/18/87	08:38	! 51AR

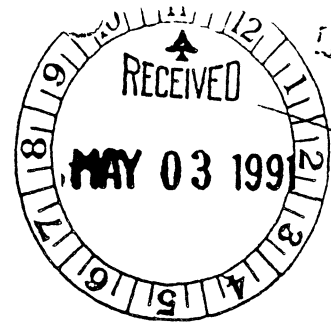
EXHIBIT "12"

MICHAEL N. MARTINEZ - No. 2109
Attorney for Defendants
349 South 200 East, Suite 110
Salt Lake City, Utah 84111
(801) 359-8000

FILED
DISTRICT COURT

AUG 15 10 27 AM '91

TH. J. L. DISTRICT
SALT LAKE COUNTY
BY *[Signature]*
DEPUTY CLERK



IN THE DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

MYRA L. TAYLOR,

Plaintiff,

vs.

RONALD H. OLSON, CAROL D.
OLSON AND JENNIFER HEATHER
OLSON,

Defendants.

)
) DEFENDANTS, CAROL D. OLSON
) AND RONALD H. OLSON,
) CONSOLIDATED RESPONSES TO
) PLAINTIFFS FIRST SET OF
) INTERROGATORIES
)
) Civil No. 900907125PI
) Judge Timothy R. Hanson
)
)
)

Comes now defendants, Carol D. Olson and Ronald H. Olson,
(hereafter "Olson") and respond to the plaintiff's interrogatories
as follows:

INTERROGATORIES

INTERROGATORY NO. 1. State the full name, address and
telephone number, and official position of each person you
consulted in compiling your answers to the INTERROGATORIES, and
indicate why each such person was consulted.

RESPONSE NO 1. Ronald H. Olson, 1930 Logan Ave., Salt Lake
City, Utah 84108, (801) 581-1808.

Gary Howe, Attorney, initial attorney for defendants.

Dan Flandro, Notary who signed release sheet, Valley Bank,
1300 South 2100 East, Salt Lake City, Utah.

INTERROGATORY NO 2. Identify each and every document,
including all business records, diaries, correspondence, ledger

EXHIBIT

upon unsubstantiated legal conclusions and damage claims.

INTERROGATORY NO. 18. Identify the owner(s) of the 1974 Volkswagen automobile ("Volkswagen") described in paragraph 1 of the plaintiff's complaint. In this connection, state the name, address and telephone number of the owner on the accident date, and state the identity of the person from whom the owner was purchasing the motor vehicles.

RESPONSE NO. 18. Heather Olson, 1930 Logan Ave., Salt Lake City, Utah 84108, (801) 581-1808. She borrowed the money from Ronald H. Olson who borrowed from Valley Bank.

INTERROGATORY NO. 19. State whether the defendant Jennifer Heather Olson ("Jennifer") had any interest in the said Volkswagen automobile on the accident date --- October 17, 1987 ("accident date"). If so, state the exact interest the said defendant had in the Volkswagen and how she acquired that interest.

RESPONSE NO. 19. She was buying the car. See Response 18.

INTERROGATORY NO. 20. State why the Volkswagen was not registered in the state of Utah on the accident date.

RESPONSE NO. 20. It was an old car that was going to be restored and was not to be driven.

INTERROGATORY NO. 21. State why the Volkswagen was uninsured on the accident date.

RESPONSE NO. 21. It was not meant to be driven.

INTERROGATORY NO. 22. State whether you had ever told Jennifer not to use the Volkswagen prior to the accident date.

RESPONSE NO. 22. Yes.

INTERROGATORY NO. 23. If your answer to the next-preceding

interrogatory is in the affirmative, please answer the following questions.

(a) The day and time of day of each and every time prior to the accident date that you told Jennifer not to use the Volkswagen.

(b) The identity of the other persons who were present when you told Jennifer this.

(c) The substance of what you told Jennifer about not using the Volkswagen.

(d) The reasons, in detail, why you told Jennifer not to use the Volkswagen.

RESPONSE NO. 23.

(a) October 17, 1987 at 5:00 p.m.

(b) Jennifer.

(c) Do not use the Volkswagen, use the Buick.

(d) It wasn't road worthy, registered or insured.

INTERROGATORY NO. 24. Did you have personal knowledge that Jennifer had driven the said Volkswagen prior to the accident date. If so, please answer the following questions.

(a) How you obtained the said knowledge.

(b) The exact dates and time of day Jennifer had driven the Volkswagen.

RESPONSE NO. 24. No.

INTERROGATORY NO. 25. What measures did you take, if any, to ensure Jennifer did not use the Volkswagen prior to the accident date.

RESPONSE NO. 25. Told her not to use it.

following questions.

(a) The identity of the friends.

(b) The dates when Jennifer was with the said persons.

(c) How you gained your knowledge of the said times when Jennifer was with the said persons.

RESPONSE NO. 34. No.

INTERROGATORY NO. 35. Did Jennifer ever tell you that she had been with persons who were consuming alcoholic beverages? If so, identify the said persons, the date and time of day when you had the conversations and the substance of what Jennifer told you.

RESPONSE NO. 35. No.

INTERROGATORY NO. 36. State whether you ever knew of any of Jennifer's personal friends who had been involved in any trouble through drinking or consuming alcoholic beverages. In this connection, the words "knowledge of any trouble" are meant to mean your knowledge of any newspaper accounts, telephone calls, or other sources as well as personal knowledge which you had of Jennifer's friends being involved in any disciplinary actions of any kind either by school officials, by their parents, or by other third parties. "Disciplinary action" by school officials means suspensions, reprimands, expulsion or any other sanctions by the said school officials. "Disciplinary action" by parents means grounding, loss of allowances or other privileges, or any other sanctions, punishments or penalties.

RESPONSE NO. 36. Only rumor and gossip which we did not substantiate nor pursue due to its dubious nature.

INTERROGATORY NO. 37. If your answer to the next-preceding

(e) Grounded her for six months.

(f) Same as (e).

INTERROGATORY NO. 39. State whether Jennifer ever told you she was under the influence of or affected by alcoholic beverages at the time of her accident with the plaintiff Myra Taylor. If your answer to this interrogatory is yes, please answer the following questions.

(a) The date when Jennifer made this statement to you.

(b) The place where the statement was made.

(c) The identity of the other persons who were present when the statement was made.

(d) The substance of what was said by Jennifer to you about her being under the influence of or affected by alcoholic beverages at the time of the said accident.

RESPONSE NO. 39. No. Once informed of the circumstances, we did not need Jennifer to confirm she had been drinking.

INTERROGATORY NO. 40. Did you become aware of any times subsequent to the accident with Myra Taylor when a sample of Jennifer's blood was taken to determine the alcoholic content of the said blood? If your answer to this interrogatory is in the affirmative, please answer the following questions.

(a) The date and exact time of day when you became aware of the taking of the blood sample.

(b) The identity of the person who first made you aware of this matter.

(c) Did you give your permission for the taking of the said blood sample?

RESPONSE NO. 46. We have received no such information.

INTERROGATORY NO. 47. State in detail each and every instruction, direction, talk or conversation ("instructions") you had with your daughter Jennifer to supervise or control her use of the Volkswagen automobile. In this connection, include the following information.

- (a) The date the instructions were given to Jennifer.
- (b) The place where the instructions were given.
- (c) The identity of other persons who were present when the instructions were given.
- (d) The nature of the said instructions.

RESPONSE NO. 47. See Responses 23 and 42.

INTERROGATORY NO. 48. State exactly what action you took to ensure Jennifer would not have access to the keys to the Volkswagen automobile.

RESPONSE NO. 48. Only one set of keys existed and they were in Ronald Olson's room.

INTERROGATORY NO. 49. State how Jennifer acquired access to the keys to the Volkswagen automobile on the date of the accident.

RESPONSE NO. 49. Took them from Ronald Olson's dresser drawer.

INTERROGATORY NO. 50. After you had instructed Jennifer not to use the Volkswagen automobile when it was uninsured and not registered, did Jennifer disregard your instructions and use the Volkswagen automobile prior to the date of the accident -- October 17, 1987? If so, please answer the following questions.

- (a) The date(s) when she used the Volkswagen.

EXHIBIT "13"

500007-85

FILED DISTRICT COURT
Third Judicial District

IN THE DISTRICT COURT FOR SALT LAKE COUNTY
NOV 19 1992

STATE OF UTAH

MYRA L. TAYLOR,

Plaintiff,

-vs-

RONALD H. OLSON, CAROL D. OLSON, : Deposition of:
AND JENNIFER HEATHER OLSON, : JENNIFER HEATHER OLSON

Defendants.

-oOo-

By

SALT LAKE COUNTY

Deputy Clerk

:

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-oOo-

BE IT REMEMBERED that on the 14th day of
October, 1991, the deposition of JENNIFER HEATHER OLSON,
produced as a witness herein at the instance of the
Plaintiff, in the above-entitled action now pending in
the above-named court, was taken before Elaine
FitzGerald, a Certified Shorthand Reporter and Notary
Public in and for the State of Utah, commencing at the
hour of 2:10 P.M. of said day at the Law Offices of James
A. McIntosh, Esquire, Suite 14, Intrade Building, 1399
South 700 East, Salt Lake City, Salt Lake County, State
of Utah.

That said deposition was taken pursuant to
Notice and Subpoena.

-oOo-

ORIGINAL

Elaine FitzGerald
CSR No. 329

INDEPENDENT REPORTING
SERVICE
Certified Shorthand Reporters

1200 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111
(801) 538-2333

1 Q. After you had driven it.

2 A. Yes.

3 Q. And prior to October?

4 A. I think so.

5 Q. Do you remember how many times you had driven it
6 prior to October approximately when he found out you were
7 driving it and told you not to do it again?

8 A. No. I remember one time I moved it and he told
9 me not to touch it.

10 Q. Did you ever take your friends Kristi Bringhurst
11 or Jenny Pia for a ride in that car prior to the time of
12 the accident?

13 A. Yes.

14 Q. And do you remember how many times you did that?

15 A. No. Very few, if more than -- I don't know how
16 many times.

17 Q. Would it have been more than six or less than
18 six?

19 A. Less than six.

20 Q. Okay. Would it have been more than three or
21 less than three or about three maybe?

22 A. Could be about three maybe.

23 Q. Do you remember where you went on those three
24 occasions when you took Kristi and Jenny for a ride prior
25 to October of '87?

1 A. I gave Jenny a ride home once from my house I
2 remember.

3 Q. And how far does Jenny live from your house?

4 A. At the time she lived on 15th East.

5 Q. And you live on 19th East?

6 A. Uh-huh.

7 Q. And does she live north or south of you?

8 A. North.

9 Q. And were there other times when you took Kristi
10 or Jenny somewhere else?

11 A. I drove -- I drove the car to school once.

12 Q. Any other times that you can recall?

13 A. No.

14 Q. What did you do about getting license plates to
15 put on the car during those times you drove it, Heather?

16 A. I found some.

17 Q. Where did you find them?

18 A. In the garage.

19 Q. Do you remember what the number was on the
20 license plate?

21 A. No.

22 Q. Was it the same one that was on there during the
23 day of the accident?

24 A. They were the same plates.

25 Q. Where were they located in the garage?

1 A. On shelves.

2 Q. Do you know who put them there?

3 A. No.

4 Q. How did you happen to take those plates off the
5 shelf in the garage and put them on the Volkswagen during
6 the times you drove it?

7 A. Well, they didn't have plates and I knew it
8 couldn't be taken without plates and they were there.

9 Q. Did you ever talk to your mom or dad about those
10 plates?

11 A. No.

12 Q. Never got permission from them to use them?

13 A. No.

14 Q. Where did you get the keys to the car on the
15 times you drove it?

16 A. My dad kept them in his drawer.

17 Q. Where is his drawer?

18 A. In his room.

19 Q. Which room?

20 A. His bedroom.

21 Q. Did your dad find out about those times that you
22 took the car?

23 A. He knew once, as I said, when I moved -- that he
24 was mad that I moved it, and I don't think he knew about
25 the other times.

1 Q. He didn't find out about those and tell you not
2 to use it?

3 A. I don't know what time he found out about it
4 exactly, but he -- he did ask me if I had driven it and I
5 said yes and he did find out that way, but he didn't know
6 exact times I don't think.

7 Q. Did your dad ever move the keys to somewhere
8 else when he knew you were getting them and driving the
9 car?

10 A. I think he kept them up there.

11 Q. They were always in his drawer in his bedroom;
12 is that right?

13 A. As far as I know.

14 Q. I'll represent to you, Heather, that your sister
15 Heidi said that she thought you had driven that car many
16 times to school during the period that you're talking
17 about here, and I'm not saying that she's right in that
18 because she could have a disagreement with you on that.
19 I mean, she may not know how much you drove it. She said
20 she was down at BYU, then came home a couple months
21 before she got married, but she said her recollection was
22 that you drove it several times. Does that refresh your
23 memory or would you disagree with her?

24 A. I would disagree. I did not drive it.

25 Q. You can only recall driving it to school one

1 time?

2 A. Uh-huh.

3 Q. Could you have driven it more than once?

4 A. The car?

5 Q. Yes.

6 A. Yes.

7 MR. MARTINEZ: More than once to school?

8 MR. MCINTOSH: Yes.

9 THE WITNESS: Oh, more than once to school?

10 Q. (By Mr. McIntosh) Yes.

11 A. I don't remember any other times.

12 Q. Heather, why would you take this car when your

13 dad told you not to?

14 A. Because -- I didn't realize how serious it was.

15 Q. Did your mom ever talk to you about not taking

16 the car?

17 A. Maybe just in conversation that I wasn't to take

18 it.

19 Q. How did you find out the keys were in your dad's

20 drawer in his bedroom?

21 A. Well, he keeps other keys up there.

22 Q. What would be some of the reasons, Heather, that

23 you would want to take the car? Were there special

24 events that you were trying to go to?

25 A. That night?

1 Q. No. Prior to October 1987.

2 A. Yes. I mean yeah, there --

3 Q. What were some of the events?

4 A. Well, the one day we had come home from -- for
5 lunch and we didn't have a way back to school and I took
6 it, and to give my friend a ride home.

7 Q. You had a driver's license during this period of
8 time I think, didn't you?

9 A. Yes.

10 Q. So you had had driver's ed and you knew how to
11 drive; is that right?

12 A. Yes.

13 Q. Had you ever driven any other cars other than
14 this Volkswagen prior to the accident?

15 A. Yes.

16 Q. What cars did you drive?

17 A. My dad's.

18 Q. Okay. Any others?

19 A. I think before then I had driven my friend's car
20 once or twice.

21 Q. Which friend was that?

22 A. Kristi Bringhurst.

23 Q. What kind of a car did she have?

24 A. She -- it was her parents' car.

25 Q. Okay. What kind of a car is your dad's car?

1 A. No. I don't remember.

2 Q. What did she say to you when you took it on
3 these other occasions, like to take your friend home or
4 to go to special events or something?

5 A. I don't think she knew those specific times.

6 Q. Now, you've told us that your dad talked to you
7 a few times about he was aware you had taken it, right?

8 A. Yeah, he found -- he knew.

9 Q. But you don't think your mother ever knew?

10 A. No. I think she found out, but she didn't find
11 out those times. She found out when he found out and she
12 was there when he talked to me.

13 Q. And how did your dad find out about the times
14 you had taken it?

15 A. I don't know.

16 Q. But when he asked you about them, you did admit
17 you had taken it; is that right?

18 A. Yes.

19 Q. This is prior to the accident that we're talking
20 about; is that right?

21 A. Yes.

22 Q. Heather, I want to ask you some questions about
23 your drinking habits, okay?

24 A. (Indicating.)

25 Q. This is very important in this lawsuit because

1 we have a report that your blood alcohol content was
2 taken, tested right after this accident happened. So I
3 want to ask you some questions about that.

4 MR. MCINTOSH: And by the way, Mike, I gave Gary
5 Howe copies of all that information, the reports from the
6 Department of Health, and told him what the blood alcohol
7 count was and everything shortly after the accident
8 happened when we had that information.

9 Q. (By Mr. McIntosh) I'm going to ask you about
10 alcoholic beverages, and by that I mean beer, champagne,
11 tequila, vodka, hard liquor, things like that, and I just
12 want to direct your attention to the period of time prior
13 to the accident, okay, that's prior to October the 17th
14 of 1987. I don't really care about anything you have
15 done since that time. Okay. That's been four years ago.

16 Tell me what alcoholic beverages you had
17 consumed at any time prior to the accident. I'm not
18 talking about just at the party. It could be any time
19 within the last four, five years prior to that time.

20 MR. MARTINEZ: Now, you're not asking her if she
21 had consumed it, you are saying to try and tell you about
22 specific times or events or --

23 MR. MCINTOSH: No. I want to ask her if she had
24 consumed any alcoholic beverages in that period of time.

25 THE WITNESS: Before the accident?

1 Q. (By Mr. McIntosh) Yes. Within say four, five
2 years prior to the accident.

3 A. And which ones?

4 Q. I just want you to answer first of all had you
5 consumed any. Just yes or no.

6 A. Yes.

7 Q. Okay. Let's go back to the earliest time that
8 you started drinking alcoholic beverages and I'm going to
9 give you a frame of reference. On October 17th, when the
10 accident happened, what grade were you in in school?

11 A. I was just starting my sophomore -- junior year.

12 Q. This would have been in 1987?

13 A. Uh-huh.

14 Q. So you graduated in 1989 then?

15 A. Uh-huh.

16 Q. Okay. You are starting your junior year. Had
17 you been drinking alcoholic beverages since the eighth
18 grade, Heather?

19 A. No, not in eighth grade.

20 Q. I'll represent to you that one of the witnesses
21 that we took the testimony of last week indicated that
22 you had been taking it since the eighth grade. Do you
23 disagree with that?

24 A. Not in eighth grade. After the eighth grade.

25 Q. The summer following the eighth grade?

- 1 A. Uh-huh.
- 2 Q. What alcoholic beverages did you drink then?
- 3 A. Beer.
- 4 Q. Just beer?
- 5 A. And wine coolers.
- 6 Q. Anything else?
- 7 A. No.
- 8 Q. Where did you usually get those drinks?
- 9 A. I believe they were just at places, like at the
10 houses.
- 11 Q. Where you would have parties you mean?
- 12 A. At friends' houses.
- 13 Q. And starting with that summer after the eighth
14 grade and going through the ninth grade, how often would
15 you on an average consume alcoholic beverages? Would it
16 be once a week, once a month? Any period of time that
17 you can use for a frame of reference?
- 18 A. It was more like I did it and then maybe, you
19 know, like twice, and then I remember when I was a
20 freshman I didn't want to do it for a long time and
21 didn't for a long time.
- 22 Q. A long time to you would mean what? Would it be
23 your whole freshman year, all nine months?
- 24 A. No, not my whole freshman year.
- 25 Q. How many months did you go in your freshman year

1 without drinking alcoholic beverages?

2 A. Oh, it was months.

3 Q. Would you drink them at Christmastime, during
4 the Christmas break?

5 A. No.

6 Q. Do you remember any specific times that you
7 would drink alcoholic beverages in your freshman year?

8 A. It was more to the end of the year when I did
9 drink again.

10 Q. And was that at your friends' houses again?

11 A. Yes.

12 Q. And who were some of the friends that you would
13 go to where you drank alcoholic beverages?

14 A. Jenny Pia's.

15 Q. Anybody else?

16 A. We'd go to the Levy's.

17 Q. Scott Levy?

18 A. Uh-huh. Scott Levy's.

19 Q. Okay. Anybody else?

20 A. Not that I remember.

21 Q. Okay. Scott Levy's and Jenny Pia's are the two
22 that come to your mind today; is that right?

23 A. Yes.

24 Q. Okay. And when you went to the homes of those
25 two people, would the alcoholic beverages be there or

1 would you bring some?

2 A. I never took any.

3 Q. What about the summer after the ninth grade,
4 before you went in the tenth grade? Did you drink
5 alcoholic beverages then?

6 A. I may have because I didn't just drink once or
7 twice, but it was -- was a lot of period between them
8 because I'd decide I wasn't gonna do it and try and then
9 I just -- I don't remember.

10 Q. Okay. Would you say you did it three or four
11 times during the summer between the ninth and tenth grade
12 year, or would it be more than that or less than that?

13 A. I remember one specific time that I can think
14 of, but I -- it was probably more than that.

15 Q. Do you have an independent recollection, just
16 your best estimate today, as to maybe how many times
17 during the summer those three months between your
18 freshman and sophomore year?

19 A. That I drank?

20 Q. Yes.

21 A. I remember I hadn't drank for a long time before
22 that night. I couldn't give --

23 Q. Would it be more than six or less than six?

24 A. Less than six because I --

25 Q. More than three or less than three or about

1 three?

2 A. In the three months prior?

3 Q. Three months between your freshman and your
4 sophomore year, the summer months, June, July and
5 August.

6 A. Oh, between the -- not before the accident?

7 Q. Oh, no. We're talking about --

8 MR. MCINTOSH: Let's just take about a
9 five-minute break here.

10 THE WITNESS: Okay.

11 (Recess taken.)

12 Q. (By Mr. McIntosh) Okay. Heather, let's go back
13 to your drinking experiences between your freshman and
14 sophomore years then, June, July and August, and ask you
15 again during that period of time how often you would have
16 drank alcoholic beverages.

17 A. I don't know an exact number.

18 Q. I understand you don't know an exact number, and
19 this is a long ways back here. I'm not trying to, you
20 know, have you come up with the exact number.

21 A. Okay.

22 Q. And I understand that you have done a lot to
23 stop drinking alcoholic beverages since this accident. I
24 think that's commendable. It's just an unfortunate
25 situation that's happened here and we have to go into

1 this. I don't particularly like going into it, but it's
2 very important in our lawsuit because it relates to
3 punitive damage issues and other issues that we are going
4 to be getting into in the trial.

5 A. I understand.

6 Q. So I have to ask you about this and I just want
7 your best recollection. You know, you're the one that
8 drank these things. And nobody is here to accuse you of
9 anything, Heather. I'm not sitting here as a judge and I
10 don't mean to be judgmental of your drinking habits. And
11 people drink and they don't drink and it really doesn't
12 make any difference to me one way or another, but I do
13 have a duty to find out as much as I can about those
14 drinking habits because it's important to this lawsuit.

15 A. Okay.

16 Q. So just with that background, maybe you could
17 just tell me, just recollection, if you have a
18 recollection of doing this periodically, maybe how many
19 times you can recall.

20 A. Maybe a couple drinks.

21 Q. All right. Let's take your sophomore year at
22 school. What would be some of the occasions during the
23 sophomore year that you would maybe be drinking? This
24 would have been about a year prior to the accident,
25 right?

1 A. Uh-huh.

2 Q. Okay. Do you remember some of the times when
3 you would be drinking during that school year? Was your
4 drinking usually done on the weekends as opposed to
5 during the week?

6 A. Yes.

7 Q. So it would usually be, what, Friday or Saturday
8 nights?

9 A. Yes.

10 Q. Do you recall drinking any other nights of the
11 week?

12 A. No.

13 Q. Do you recall drinking in connection with events
14 like football games or basketball games or things like
15 that?

16 A. No.

17 Q. Do you recall ever going to any football games
18 when you had been drinking?

19 A. No.

20 Q. Okay. I'll represent to you that one of the
21 witnesses last week said that they thought you had been
22 drinking at a football game on the Thursday prior to the
23 accident. Do you recall ever doing that?

24 A. No.

25 Q. Okay. During your sophomore year then, what

1 would be the frequency? Would you do this one weekend a
2 month or less than that or more than that?

3 A. I may have drank like two weeks in a row and
4 then not for a long --

5 Q. What would you say for an average during the
6 months of the school year? Would it have averaged at
7 least once a month?

8 A. If you'd spread them out, no, not that much.

9 Q. Were there some months when you didn't drink
10 once?

11 A. Yeah.

12 Q. And were there some months when you drank more
13 than once?

14 A. Yeah.

15 Q. And the alcoholic beverages that you drank
16 during your sophomore year, would they have been the beer
17 and the wine that you talked about before?

18 A. Uh-huh.

19 Q. Did you ever use anything other than the beer
20 and wine?

21 A. I can't remember what it was, but there is
22 something -- I think it was a hard -- well, I know it was
23 a hard alcohol, but I don't know what it was.

24 Q. Was it tequila?

25 A. No, it wasn't tequila.

1 Q. Do you remember where it was that you had drank
2 that?

3 A. It was at Jenny Pia's.

4 Q. Did Jenny have it there already?

5 A. Uh-huh. Yes.

6 Q. Did you ever have any of these drinking sessions
7 at your house?

8 A. No.

9 Q. Now, let's take the period of time between your
10 sophomore and junior year. Okay. This would be the
11 months of June, July and August of 1987. Did you drink
12 alcoholic beverages during that summer?

13 A. I think I probably did after school ended in
14 June, so yes, I did that summer.

15 Q. Okay. And could you give us your best estimate
16 as to what the frequency would have been? Would it have
17 been one weekend a month or more than that or less than
18 that for June, July and August?

19 A. When I drank that night, I hadn't drank for a
20 long time, and so just -- because I remember I hadn't for
21 a long time. It wasn't -- I mean, if I did during the
22 summer, it was just after school ended and probably a
23 couple of -- I mean, I don't know an exact number.

24 Q. Maybe a couple of times --

25 A. Yeah.

1 Q. -- during the summer?

2 And were you drinking beer and wine on those
3 occasions, too?

4 A. Yeah. I'm sure that's what --

5 Q. When you would drink, Heather -- let's take a
6 period of time, maybe a year before the accident.

7 A. Uh-huh.

8 Q. This would have been during your sophomore year
9 and the first part of your junior year, maybe a month or
10 two before the accident. How many beers would you have
11 when you would do this drinking?

12 A. I guess it would vary, but --

13 Q. Give me the minimum amount that you would ever
14 drink. Just one bottle or one can?

15 A. Yeah. I didn't like -- like the beer.

16 Q. How many cans of beer have you had at one time
17 or bottles of beer at one time?

18 A. At one time?

19 Q. Maximum amount.

20 A. I think I drank like four or -- I've never drank
21 a whole thing of --

22 Q. Six-pack?

23 A. Yeah, the six-pack.

24 Q. You might have had four or five though?

25 A. Four or five, yeah.

1 Q. And during the time that you might have drank
2 four or five cans of beer, did you also have some wine?

3 A. No. I didn't drink -- if -- I drank wine
4 coolers. I drank wine coolers.

5 Q. What do you mean by wine coolers?

6 A. They're just the like White Mountain wine
7 coolers. They're in a bottle and they're -- they were
8 really strong so like I would drink maybe two of those.

9 Q. What size were the wine coolers; do you know?
10 Are they pints or --

11 A. They're in bottles and I don't know that -- how
12 much fluid is --

13 Q. How many ounces is in it or anything?

14 A. No.

15 Q. Now, let's take the period of time say six
16 months prior to the accident, okay?

17 A. (Indicating.)

18 Q. Let's take that summer prior to your junior year
19 and September and October your junior year. Do you
20 remember a group of friends that you had consisting of
21 Steve Jones, Steve Ebert, Jenny Pia, Kristi Bringhurst,
22 Scott Levy and Jeff Gertino, a Muir fellow? Do you
23 remember that group?

24 A. Uh-huh.

25 Q. Do you remember getting together for parties

1 with that group during that six-month period? Some of
2 the parties would be at Scott Levy's house?

3 A. We'd go up to Levy's.

4 Q. I didn't mean to say house. I think it was an
5 apartment. I think he lived in Foothill Place
6 Apartments?

7 A. Uh-huh.

8 Q. And did you go to some other people's houses or
9 apartments also?

10 A. Well, I know a few of their families and we'd go
11 to their houses.

12 Q. And when you had these gatherings, would it be
13 true, Heather, that there was beer and intoxicating
14 beverages that were served and usually all the kids that
15 came would pitch in and pay a little bit for it?

16 MR. MARTINEZ: Well, that assumes a lot of
17 facts, like every time they got together there was a
18 party and they were drinking.

19 THE WITNESS: Yeah.

20 Q. (By Mr. McIntosh) Well, let's take the times
21 when you did get together and when you did drink when
22 there was alcoholic beverages. On those occasions, I
23 think you had some of those parties where there was beer,
24 didn't you?

25 A. Yeah.

1 Q. In fact, most of the time that you got together,
2 there was beer? When you got together, there was beer,
3 wasn't there, for that group?

4 A. Well, it really depends, because that group,
5 there were the kids that came from families who didn't
6 approve and we wouldn't --

7 Q. I understand, but I'll represent to you,
8 Heather, that nearly every one of the eight witnesses
9 said last time that nearly every time they got together,
10 they had beer. Now, would you dispute that?

11 A. Well, I can remember a number of times going to
12 Ebert's and not drinking or going to Kristi's house and
13 not drinking, but we did have --

14 Q. You are aware that Kristi drank beer; are you
15 not?

16 A. Yeah, but we never drank at her house.

17 Q. Okay. Right. Ebert and Kristi Bringhurst. Any
18 others?

19 A. That we didn't drink at their houses?

20 Q. Yes.

21 A. We never drank at Jeff Gertino's house. It was
22 when -- you know, the specific times were in usually the
23 same places.

24 Q. Okay. You had these parties with them. They'd
25 usually start about 7:00 in the evening and go until

1 12:00 or 12:15 because you had curfew at 12:30; is that a
2 fair statement?

3 A. Yes.

4 Q. And usually the group would just get together
5 and decide whose place they were going to go to on a
6 particular day; is that right?

7 A. Uh-huh.

8 Q. And at those times when alcoholic beverages were
9 served, you'd usually just have the beer or something
10 like that and there wouldn't be food served in connection
11 with it; is that right?

12 A. You mean they wouldn't give us food or --

13 Q. That's right. When you would go to their
14 places, you'd be there and the beer would be there, but
15 they didn't have food to go along with that normally that
16 was out with the beer? And by food I mean fried chicken,
17 rolls or any cold cuts or anything like that.

18 A. No. Maybe eat some chips or something like
19 that.

20 Q. Might have had some chips or something like
21 that?

22 A. Yeah.

23 Q. Okay. All right. Let's go to the period of
24 time that we're talking about, this accident date, okay,
25 Friday, October 16th, and Saturday, early morning hours,

1 your arm or anything, taking some blood from you?

2 A. I don't know. I know I got a tetanus shot and I
3 don't know what else they did. That's one thing they
4 told me, that I was getting a tetanus shot.

5 Q. Do you remember anything else about the
6 accident? Do you remember anything else that happened in
7 the hospital?

8 A. I remember just my dad and my neighbor were
9 there.

10 Q. Which neighbor was that?

11 A. Mike Margetts.

12 Q. Do you remember anything that happened in the
13 hospital as far as anybody that came there to see you?

14 A. No.

15 Q. Heather, going back to this Volkswagen that you
16 had at the time, you said you got the license plates off
17 a shelf in the garage. How did you know the license
18 plates were there?

19 A. I had seen them before.

20 Q. When your dad used to take the Volkswagen down
21 to Jim's garage, did he get those license plates and put
22 them on there when he drove it down to the garage?

23 A. I never saw him, no.

24 Q. Did you actually put the license plates on the
25 Volkswagen yourself? By that I mean, did you use the

1 screwdriver, put the screws in and affix it there?

2 A. Yes.

3 Q. You did that every time that you used it; is
4 that right?

5 A. Yes.

6 Q. And did you do that this night?

7 A. Uh-huh. Yes.

8 Q. Did you ask your parents if you could take the
9 Volkswagen that night?

10 A. No.

11 Q. Were your parents home that night?

12 A. No. My mom was out of town.

13 Q. Was your dad home?

14 A. No.

15 Q. Do you know where he was?

16 A. No.

17 Q. Where was the Volkswagen that night? Was it
18 inside the garage or was it outside of the garage?

19 A. It was in the driveway.

20 Q. Was it behind another car?

21 A. No.

22 Q. So it was outside the garage, on the driveway,
23 but not behind the other car; is that right?

24 A. No.

25 Q. Okay. Were there any cars in the garage? I

1 Q. When did your mom or your dad find out about
2 your having drank beer before?

3 A. I think when I was a sophomore.

4 Q. How did they find that out? Did you tell them?

5 A. No. They -- they -- one night they asked me if
6 I had been drinking that night.

7 Q. You told them you had?

8 A. Yeah.

9 Q. Did they just smell alcohol on your breath?

10 A. Well, I think it was on my clothes, and I don't
11 even remember if I had been drinking that night, but I
12 said that I had.

13 Q. What did they tell you when they found out you
14 had been drinking?

15 A. We just talked about it and --

16 Q. This was during your sophomore year about a year
17 before the accident?

18 A. Yeah.

19 Q. Did they find out after that time that you had
20 been drinking again?

21 A. No, not that I can remember.

22 Q. Did you ever tell them?

23 A. No.

24 Q. Did they ever talk to you about any of the
25 friends that you were going out with? This group that I

EXHIBIT "14"

IN THE DISTRICT COURT FOR SALT LAKE COUNTY
Third Judicial District
STATE OF UTAH

-o0o-

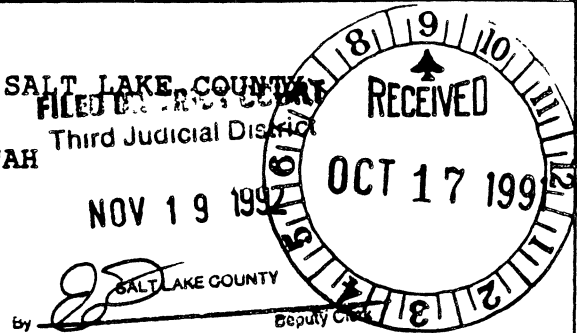
MYRA L. TAYLOR,

Plaintiff,

vs.

RONALD H. OLSON, CAROL D.
OLSON, AND JENNIFER HEATHER
OLSON,

Defendant.



Civil No. 900907125PI

Deposition of:

HEIDI NELSON

ORIGINAL

-o0o-

BE IT REMEMBERED that on the 8th day of October, 1991, the deposition of HEIDI NELSON, produced as a witness herein at the instance of the plaintiff, in the above-entitled action now pending in the above-named court, was taken before Melinda J. Andersen, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, commencing at the hour of 3:50 p.m. of said day, at the offices of James A. McIntosh, Salt Lake City, State of Utah.

That said deposition was taken pursuant to Subpoena.

-o0o-

MELINDA J. ANDERSEN
CSR No. 281

INDEPENDENT REPORTING
SERVICE
Certified Shorthand Reporters

1200 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111
(801) 538-2333

1 Q What was that?

2 A It was a Suzuki Samurai.

3 Q A Suzuki?

4 A Yes.

5 Q When did you get your Rabbit automobile?

6 A June of 1987 -- no, I'm sorry. It was March.

7 Q What year was it? Was it a new one that year?

8 A No. I'm not sure.

9 Q You're not sure what year it was?

10 A It was an '84 or '85.

11 Q Rabbit?

12 A Yes.

13 Q Do you still have that automobile?

14 A No.

15 Q When did you get the Suzuki?

16 A I believe August of '86.. It was around then.

17 Q And what year was that car?

18 A It was new that year.

19 Q So it probably would have been an '86?

20 A '86.

21 Q Who did you buy it from?

22 A I believe Steven Wade.

23 Q Were you the registered owner?

24 A Yes.

25 Q And your name at that time would have been what?

1 Q Do you have any papers pertaining to the sale of
2 that car?

3 A No.

4 Q Where would the papers be?

5 A I believe he took over the payments and I
6 believe it was done through the bank, through Valley Bank.

7 Q But you don't remember his name?

8 A I don't.

9 Q Can you find that out for us?

10 A I can.

11 Q Would you call me with his name and address and
12 telephone number?

13 A Yes.

14 Q If I'm not in just leave that with my secretary.

15 A Okay.

16 Q What did you do with the license plates from the
17 Suzuki when you sold it?

18 A I don't know. I don't remember.

19 Q Did you put them on the Volkswagen?

20 A No.

21 Q How do you know that if you don't remember what
22 you did with them?

23 A I would imagine that I left them in the garage
24 at home.

25 Q Did you get new plates for the Rabbit?

1 A I never looked. I would imagine they were on it
2 if she was driving on the streets.

3 Q Did you ever hear your mom or dad ever tell her
4 not to drive that Volkswagen because it wasn't registered?

5 A No.

6 Q Did you ever hear your mom and dad tell her not
7 to tell the Volkswagen because there wasn't insurance on
8 it?

9 A No.

10 Q Did you ever hear your mom and dad tell Heather
11 for any reason not to drive the Volkswagen?

12 A My mom and dad have told all of us on numerous
13 occasions not to drive cars.

14 Q What do they tell that?

15 A If they don't want us going out, or if we have
16 other things they don't always let us drive to places.

17 Q Specifically with respect to the Volkswagen, do
18 you ever remember your folks telling Heather not to drive
19 that car?

20 A No.

21 Q Did you ever see Heather drive the car during
22 the six months?

23 A Yes.

24 Q Was she driving it on a regular basis?

25 A No, I think maybe to school.

1 Q You don't know that?

2 A No.

3 Q Did Heather ever tell you that your father told
4 her not to use the Volkswagen because it wasn't in a
5 condition to drive it?

6 A I wasn't living at home. No, I don't know.

7 Q Prior to June of 1987, had you been to BYU that
8 year?

9 A I was there from August until February.

10 Q August of '86 and February of '87?

11 A Right.

12 Q Then from February of '87 to June when you got
13 married, you had been living at home?

14 A Right.

15 Q During that period of time, four months, from
16 February to June when you were living at home, again, your
17 recollection is that you saw Heather driving the
18 Volkswagen? She would take it to school and use it on
19 other occasions; is that right?

20 A Yes.

21 Q I'm going to read to you from interrogatory No.
22 24 that your parents answered a question that I asked them:
23 Did you have personal knowledge that Jennifer had driven
24 the said Volkswagen prior to the accident date, and they
25 said no.

EXHIBIT "15"

IN THE DISTRICT COURT FOR SALT LAKE COUNTY

Tenth Judicial Dist.

STATE OF UTAH

NOV 19 1991
OCT 17 1991

-o-o-

MYRA L. TAYLOR,

Plaintiff,

vs.

RONALD H. OLSON, CAROL D.
OLSON, AND JENNIFER HEATHER
OLSON,

Defendant.

By

Civil No. 900907125PI

Deposition of:

KRISTI BRINGHURST

ORIGINAL

-o-o-

BE IT REMEMBERED that on the 8th day of October, 1991, the deposition of KRISTI BRINGHURST, produced as a witness herein at the instance of the plaintiff, in the above-entitled action now pending in the above-named court, was taken before Melinda J. Andersen, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, commencing at the hour of 1:00 p.m. of said day, at the offices of James A. McIntosh, Salt Lake City, State of Utah.

That said deposition was taken pursuant to Subpoena.

-o-o-

MELINDA J. ANDERSEN
CSR No. 281

INDEPENDENT REPORTING
SERVICE
Certified Shorthand Reporters

1200 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111
(801) 538-2333

1 or on a table.

2 Q During the night did you notice that other
3 people would be bringing beer in as they came to the party?

4 A No, I didn't notice.

5 Q Do you know who brought the beer that was there
6 when you got there?

7 A I don't know who did.

8 Q Did you notice Heather Olson drinking any beer
9 while she was there?

10 A I don't remember. I know -- I think she may
11 have had a beer because I -- I'm not positive. I can't
12 remember exactly, but I think she had had a beer.

13 Q The other parties that you had where beer was
14 served over there, did Heather drink beer then?

15 A I don't know if Heather was at parties other
16 than that time with me.

17 Q The other three parties that you mentioned that
18 this group of friends had, Heather wasn't there at those
19 parties?

20 A She could have been at one other one, but I
21 don't remember Heather being there.

22 Q Did you ever see Heather drinking alcoholic
23 beverages before?

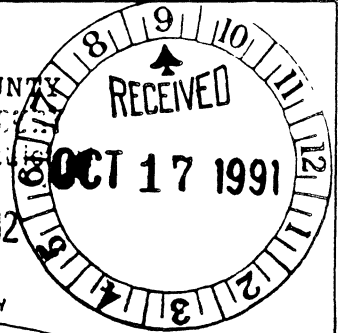
24 A Yes.

25 Q Where was that?

EXHIBIT "16"

IN THE DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH



-o0o-

NOV 19 1992

MYRA L. TAYLOR,

Plaintiff,

vs.

RONALD H. OLSON, CAROL D.
OLSON, AND JENNIFER HEATHER
OLSON,

Defendant.

By [Signature] SALT LAKE COUNTY

Civil No. 900907125PI

Deposition of:

JENNIFER PIA

ORIGINAL

-o0o-

BE IT REMEMBERED that on the 8th day of October, 1991, the deposition of JENNIFER PIA, produced as a witness herein at the instance of the plaintiff, in the above-entitled action now pending in the above-named court, was taken before Melinda J. Andersen, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, commencing at the hour of 1:25 p.m. of said day, at the offices of James A. McIntosh, Salt Lake City, State of Utah.

That said deposition was taken pursuant to Subpoena.

-o0o-

MELINDA J. ANDERSEN
CSR No. 281

INDEPENDENT REPORTING
SERVICE

Certified Shorthand Reporters

1200 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111
(801) 538-2333

1 A No.

2 Q No hard liquor?

3 A Not that I can remember, no.

4 Q So just beer?

5 A Yes.

6 Q Did you notice that some of the fellows were

7 bringing beer in during the night as they came to the

8 party?

9 A Probably. They usually did.

10 Q Where was the beer kept?

11 A I think just in his refrigerator.

12 Q At the parties that you had over there

13 previously, on most of those occasions was it the same kind

14 of party it was this night?

15 A Yes.

16 Q You had the same type of alcoholic beverages

17 normally?

18 A Yes.

19 Q Was there anybody in your group that did not

20 drink alcoholic beverages?

21 A I don't think so.

22 Q Did you know that Heather consumed alcoholic

23 beverages?

24 A Yes.

25 Q How did you know that?

1 A Because I had seen her.

2 Q Had you see her drink at these prior parties
3 that you had also?

4 A Yes.

5 Q Did you see her drink some alcoholic beverages
6 the night of this party that we're talking about?

7 A Yes.

8 Q Did you actually serve her some of those
9 alcoholic beverages?

10 A No.

11 Q So was it just a matter of most of the kids that
12 wanted to have them would go to the refrigerator or the
13 table, wherever they were, and take whatever they wanted?

14 A Yes.

15 Q You didn't have a bartender or anybody actually
16 serving those to anyone?

17 A No.

18 Q Did you have a chance to observe Heather taking
19 alcoholic beverages that night?

20 A Yes.

21 Q Do you know how many she had?

22 A No.

23 Q Did you have a chance to see her when she left
24 the party that night?

25 A Yes, I did.

1 Q Do you know about when she left?

2 A Probably -- I think that night she left earlier
3 and she went to another party alone. We didn't go with
4 her. So she probably left around 9:00 or so, I would
5 think.

6 Q Do you remember that for sure?

7 A Well, I can't be positive, but I'm pretty sure
8 that she left and went somewhere else.

9 Q I think the sequence of the facts we have,
10 Jennifer, probably would be that she stayed at that party
11 most of the evening and some of the boys had taken her car
12 and gone out joyriding and she got kind of mad at them and
13 when they brought it back she left about midnight. Does
14 that refresh your memory?

15 A I think so. That could be because I -- I
16 remember she had -- it was so long ago. That could have
17 been it.

18 Q Do you remember an incident like that where some
19 of the boys had taken her car?

20 A Yes.

21 Q I think she had a Volkswagen?

22 A Yes, a bug.

23 Q She got mad at them for taking it and then when
24 they brought it back she left by herself?

25 A Right. That sounds right.

1 Q Was that about midnight?

2 A Probably, because I remember when I was driving
3 home from the party I saw her car. I called -- because my
4 house is on the way home from Scott's -- I past the
5 accident and I called Kristi as soon as I got home and
6 said, Did Heather get in an accident.

7 Q Did you stop at the accident scene?

8 A No, I drove around the block probably two or
9 three times because I wasn't sure it was her. I never saw
10 her. There was a crowd around it and I didn't want to
11 stop.

12 Q Did you recognize her car there?

13 A Yes.

14 Q Do you know what condition she was in when she
15 left that night as far as being under the influence of
16 alcohol or not?

17 A Yes, she was.

18 Q She was under the influence?

19 A Yes.

20 Q What makes you say that?

21 A Because she had been drinking. It's just not --
22 I mean, I'm sure she was.

23 Q Can you tell us what you base that on, just
24 facts that led you to believe that? Sometimes people kind
25 of stumble around, sometimes their speech is slurred,

1 sometimes they do other things. What made you believe that
2 she was under the influence?

3 A Well, I can't remember that, but she had been
4 drinking and I'm sure -- I just knew. I guess especially
5 after the accident we realized how drunk she was.

6 Q How did you find out after the accident how
7 drunk she was?

8 A She told us what happened. I mean, just the way
9 she had hit the lady and ended up on someone's front lawn.

10 Q What did Heather tell you about the accident?

11 A The whole thing from then on -- I mean I guess
12 our relationship was just really never the same. It was
13 kind of like I guess she bumped into somebody and didn't
14 realize that she hit them or something and then they -- I
15 don't know if they chased her or turned around and followed
16 her -- I don't remember. And she was trying to get -- like
17 thinking that they wouldn't catch up to her or something.
18 I can't remember.

19 Q You're right. There was a hit-and-run just a
20 few minutes before this up by Guardsman Way and 9th South,
21 and she was leaving that scene when she hit my client, Myra
22 Taylor, right around Nelson Crest. You have the right
23 sequence there.

24 A Then she just blacked out or something I guess
25 and ended up in that yard.

1 Q What did she tell you about her state of being
2 intoxicated?

3 A She just -- I guess she just probably said she
4 had been drinking too much.

5 Q Okay.

6 A And she was mad at those guys for taking her car
7 and stuff.

8 Q Did she tell you how much she had consumed at
9 the party?

10 A No.

11 Q You have a definite opinion that she was under
12 the influence of alcohol when she left?

13 A Yes.

14 Q Did you ever tell her not to drive her car in
15 that condition?

16 A I'm sure we had told her before, but I don't
17 think that night we realized how -- I mean, I was shocked.
18 I didn't realize how drunk she was.

19 Q Until when?

20 A Until the accident. I guess she was drunker
21 than we all thought she was.

22 Q Had she been drunk on other occasions when you
23 had been over there for parties?

24 A Yes.

25 Q And did anybody ever talk to her and tell her

1 she shouldn't go out and drive in that condition at other
2 parties?

3 A I'm sure they had.

4 Q Do you remember anybody saying that?

5 A Yes, I think so.

6 Q Who do you remember telling her that?

7 A I don't remember who, but I'm sure -- I can
8 remember people talking about it and saying you shouldn't
9 drive -- I mean to everybody we would say that.

10 Q Were her drinking habits at these parties that
11 you went to such that she did like to drink would you say,
12 or was it hard to get her to drink?

13 A No, she liked to.

14 Q Nobody had to force her to take anything?

15 A No.

16 Q In addition to beer that night, was there any
17 food to eat?

18 A I can't remember.

19 Q Most of the parties it was just the beer without
20 food, wasn't it?

21 A Yeah.

22 Q Did you know of any occasions where any of these
23 people that were there with you, the names we mentioned
24 including Heather, ever been disciplined by any school
25 authority for drinking alcoholic beverages?

EXHIBIT "17"

IN THE DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

-o0o-

MYRA L. TAYLOR,

Plaintiff,

vs.

RONALD H. OLSON, CAROL D.
OLSON, AND JENNIFER HEATHER
OLSON,

Defendant.

Civil No. 900907125PL

Deposition of: NOV 19 1992

SCOTT LEVY

ORIGINAL

-o0o-

BE IT REMEMBERED that on the 8th day of October,
1991, the deposition of SCOTT LEVY, produced as a witness
herein at the instance of the plaintiff, in the above-
entitled action now pending in the above-named court, was
taken before Melinda J. Andersen, a Certified Shorthand
Reporter and Notary Public in and for the State of Utah,
commencing at the hour of 2:30 p.m. of said day, at the
offices of James A. McIntosh, Salt Lake City, State of
Utah.

That said deposition was taken pursuant to Subpoena.

-o0o-

MELINDA J. ANDERSEN
CSR No. 281

INDEPENDENT REPORTING
SERVICE

Certified Shorthand Reporters

1200 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111
(801) 538-2333

1 food there.

2 A Well, we did.

3 Q Do you remember what you had out for them to eat
4 that night?

5 A Well, they would go to my cupboard anytime and
6 grab anything they wanted. That's why sometimes I didn't
7 like...

8 Q Was a matter of you having something out like
9 sandwiches or fried chicken or something?

10 A No, I didn't cater them.

11 Q What was available for them to have was the
12 alcoholic beverages; is that right?

13 A Yes.

14 Q Let me ask you about Heather Olson. Did you see
15 her at the party this night?

16 A Yes.

17 Q Did you see her drinking alcoholic beverages?

18 A I think she did.

19 Q Did you notice her condition?

20 A Yes.

21 Q Did you notice how many alcoholic beverages she
22 might have had?

23 A No, I don't have no idea how many.

24 Q Did you see her condition when she left that
25 night?

1 A I saw her, but I don't know.

2 Q Has Heather consumed alcoholic beverages at the

3 prior parties that you've had?

4 A She may have.

5 Q Do you know of your own personal knowledge that

6 she had?

7 A She probably did. I can't recall which.

8 Q You've seen her drink alcoholic beverages at

9 these parties?

10 A Yes.

11 Q Do you recall when Heather was there that Steve

12 Ebert and Steve Jones borrowed her Volkswagen to go get

13 something to eat?

14 A Yes.

15 Q Do you remember them coming back?

16 A Yes.

17 Q Do you remember about what time that was?

18 A Later.

19 Q Between 11:00 and 12:00?

20 A Probably.

21 Q Do you recall that Heather was upset that they

22 had been gone so long with her car?

23 A Yes.

24 Q Do you remember her leaving shortly after that?

25 A I knew she had left, but I don't recall her

1 A No -- well, I -- I think -- I never went there,
2 but I think the other guys may have.

3 Q Where did you usually get the alcoholic
4 beverages that you brought to the parties?

5 A Different gas stations.

6 Q Did you ever have any problems getting them even
7 though you're a minor?

8 A Yes.

9 Q How did you handle that?

10 A Send somebody that looked older.

11 Q Who did you usually send?

12 A Anybody. Somebody else would try.

13 Q Did your father have alcoholic beverages in the
14 refrigerator during the times when you weren't having these
15 parties?

16 A Sometimes.

17 Q On this particular night of this party, did you
18 drink any of the alcoholic beverages that he supplied?

19 A No.

20 Q Do you remember that for sure?

21 A Yes.

22 Q Was there alcoholic beverages in the house or in
23 the apartment that night that he brought in?

24 A No.

25 Q Was there any charge for the party?

EXHIBIT "18"

IN THE DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

-o0o-

MYRA L. TAYLOR,

Plaintiff,

vs.

RONALD H. OLSON, CAROL D.
OLSON, AND JENNIFER HEATHER
OLSON,

Defendant.

Civil No. 900907125 PRELIMINARY COURT

Deposition of:

MARK MUIR

NOV 19 1992

ORIGINAL

-o0o-

BE IT REMEMBERED that on the 8th day of October, 1991, the deposition of MARK MUIR, produced as a witness herein at the instance of the plaintiff, in the above-entitled action now pending in the above-named court, was taken before Melinda J. Andersen, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, commencing at the hour of 3:15 p.m. of said day, at the offices of James A. McIntosh, Salt Lake City, State of Utah.

That said deposition was taken pursuant to Subpoena.

-o0o-

MELINDA J. ANDERSEN
CSR No. 281

INDEPENDENT REPORTING
SERVICE
Certified Shorthand Reporters

1200 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111
(801) 538-2333

1 Q What have you talked about?

2 A I was served mine. I didn't think that much
3 about it and they asked me if I was served with one and I
4 said, yes, when, this and that, where, wondering what it
5 was all about.

6 Q Did you have a chance to review with them some
7 of the things that happened at the party?

8 A Yes, I did. Obviously I didn't recall Jeff and
9 Heather being there. When I was served with the subpoena I
10 tried to think about the night. I couldn't recall either
11 of them being there. Jeff told me he got served with one.

12 Q Did you observe Heather drinking intoxicating
13 beverages at this party?

14 A To be honest with you I can't picture it in
15 mind, but I believe she was.

16 Q Did you observe her condition at the party?

17 A I can't remember, I honestly can't.

18 Q Do you know Heather Olson?

19 A Yes, I do.

20 Q Have you ever been to a party where she was
21 there with this group before this night?

22 A Yes.

23 Q Have you ever seen her drink intoxicating
24 beverages at those other parties?

25 A Yes.

1 Q Would you say that people might have to force
2 her to drink intoxicating beverages?

3 A No.

4 Q She seemed to enjoy them, didn't she?

5 A I don't know. I guess you would have to ask
6 her. What do you mean by force?

7 Q Did she ever have to be forced in the sense that
8 she said no she didn't want any and people kept trying to
9 make her take it?

10 A No.

11 Q Most of the people that were in this group at
12 this party this night were people that you had seen
13 drinking at least beer previously; would that be a fair
14 statement?

15 A Yes.

16 Q Do you recall where they got the beer from,
17 Mr. Muir?

18 A No, I don't.

19 Q Where would you get it when you would bring it?

20 A There was quite a few gas stations four years
21 ago that sometimes would not i.d.

22 Q Did you get it from the gas station just east of
23 the Cowboy Grub?

24 A I never got it there, no. Usually some of the
25 markets in the avenues.

1 Q Did she say she was kind of running away from
2 the other one when she hit Mrs. Taylor?

3 A I can't remember. That sounds familiar, but
4 that was four years ago so it's a conversation I ca 't
5 recall.

6 Q I understand.

7 A I don't know if she said she was running, but I
8 do remember her saying she struck another car.

9 Q Did you have in your mind that this was a
10 hit-and-run situation?

11 A I can't recall. I would assume so.

12 Q Do you know if Heather brought any alcoholic
13 beverages to the party?

14 A I can't recall that.

15 Q Was it usually the fellows that would get the
16 beer and things like that?

17 A Most of the time, but not always.

18 Q Did girls bring some sometimes?

19 A Yes.

20 Q Did you ever have any occasion at any of the
21 parties that you went to where Heather was present, to tell
22 her you thought she drank too much?

23 A No.

24 Q Were you ever present when anybody else told her
25 she drank too much?

EXHIBIT "19"

IN THE DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

-o0o-

MYRA L. TAYLOR,

Plaintiff,

vs.

RONALD H. OLSON, CAROL D.
OLSON, AND JENNIFER HEATHER
OLSON,

Defendant.

Civil No. 900907125PI

Deposition of:

STEVEN KENT JONES

FILED DISTRICT COURT
ORIGINAL
NOV 19 1992

-o0o-

BE IT REMEMBERED that on the 8th day of October, 1991, the deposition of STEVEN KENT JONES, produced as a witness herein at the instance of the plaintiff, in the above-entitled action now pending in the above-named court, was taken before Melinda J. Andersen, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, commencing at the hour of 2:15 p.m. of said day, at the offices of James A. McIntosh, Salt Lake City, State of Utah.

That said deposition was taken pursuant to Subpoena.

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MELINDA J. ANDERSEN
CSR No. 281

INDEPENDENT REPORTING
SERVICE
Certified Shorthand Reporters

1200 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111
(801) 538-2333

1 should be driving when she left?

2 A Of course.

3 Q What did she say to you?

4 A Well, we gave her the keys and she ran out and a
5 few of her girlfriends ran out after her.

6 Q That would have been Jenny and Kristi?

7- A Yes.

8 Q Were they trying to tell her not to drive?

9 A As far as I know. We didn't go outside.

10 Q Did you tell her she shouldn't be driving?

11 A Uh-huh.

12 Q Did Steve Ebert tell her that, too?

13 A I hope he would.

14 Q You definitely remember telling her that?

15 A Well, whether I did not, it would seem logical.
16 I knew that she shouldn't be driving. I would hope that I
17 would say something, but whether I did or not I cannot
18 remember.

19 Q At these prior parties that Heather had been to,
20 did she drink alcoholic beverages at those?

21 A She did, not all of them though.

22 Q Did you ever have to force her to take alcoholic
23 beverages?

24 A No, of course not.

25 Q She seemed to enjoy them just like the rest of

1 you; is that right?

2 A Yes.

3 Q Did your group have any limitations on the
4 number of drinks that somebody could have at these parties?

5 A If it came to the point that we knew someone was
6 over drinking, I think we would mention it to them just for
7 the fact we didn't want them to get caught by their
8 parents, number one, and we didn't want them to get hurt.
9 As far as limiting people, no. I think one of things that
10 we tried to do when the guys would get together -- those
11 guys I mentioned previously -- when we would go out and
12 drink and stuff by ourselves, we would always have a
13 designated driver, so that someone was always chosen that
14 was not going to drink that night so we wouldn't be
15 involved in something.

16 Q Do you know how long Heather had been there
17 before you got there for the first 20 minutes?

18 A I don't know that.

19 Q Was there anybody there to check the condition
20 of people as they left?

21 A No.

22 Q Anybody present to monitor how much a person
23 drank?

24 A No, not a designated person.

25 Q Any police or security personnel present?

1 A No.

2 Q Did you ever talk to Heather about this accident
3 after it happened?

4 A No, I didn't.

5 Q Did you ever hear anything about what she told
6 other people about how intoxicated she was that night?

7 A No, but by word of mouth you hear -- apparently
8 she was involved in an accident prior to being involved
9 with these people. I know the girl that she got in an
10 accident -- I think it was Shelly Paxton, if I'm not
11 mistaken. Just through word of mouth and kind of through
12 the grapevine I found out about it. As far as addressing
13 that with Heather, no, I didn't speak with her about that.

14 Q Anything else you would like to tell us about
15 the party other than what you talked about? I'm
16 particularly interested in Heather's condition. Anything
17 in addition to what you've already said about her condition
18 as you got back and gave her the keys?

19 A I don't know how to specifically describe her
20 exact condition. It's been a long time, obviously. I did
21 know that she had been drinking and her friends making an
22 effort to run out and get the keys back from her; obviously
23 gave me an indication that they had a better judgment from
24 being there and actually witnessing how much she had
25 consumed as to whether she would be eligible to drive under

1 that condition.

2 Q The things you told us that you observed led you
3 to believe that she was under the influence of intoxicating
4 beverages; is that correct?

5 A That's correct.

6 MR. McINTOSH: That's all I have, Mr. Jones.

7 (The deposition concluded at 2:30 p.m.)-

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EXHIBIT "20"



The Ohio Casualty Group of Insurance Companies

CLAIM DEPARTMENT: 7060 Union Park Ave., Suite 350, Midvale, Utah 84047
Mailing Address: P.O. Box 429, Midvale, Utah 84047-0429 • Telephone: 801/255-5576 (Fax - 801-255-5472)

GEORGE R. KESL, *Claims Manager*
Harold F. Carlson, *Claims Supervisor*

July 22, 1992



Michael N. Martinez & Associates
Attorneys at Law
Michael N. Martinez, Esq.
4479 Gordon Lane, Suite 100
Murray, Utah 84107

Re: Your Client: Taylor, Myra L.
Our Claim No.: UT 2 GFL 88 19 83 19 A
Our Insured: Olson, Ronald & Carol
Date of Loss: 10/17/87

Dear Mr. Martinez:

We have reviewed the deposition of Jennifer (Heather) Olson which was forwarded to us with your July 6, 1992 correspondence.

We do not believe the deposition demonstrates a lack of parental supervision by Ronald Olson and Carol Olson as alleged. We believe that such an allegation of necessity would have to be supported by direct statements made by Ronald Olson and Carol Olson pertaining to their knowledge of Jennifer's use of the vehicle and knowledge of her habits of consumption of alcohol. Should you wish to make available to us copies of the deposition of Ronald Olson and Carol Olson, we shall further consider the case. At this point we must respectfully reiterate our position of a denial of Liability coverage afforded by the Olson's Homeowners policy issued by this Company.

Very truly yours,

THE AMERICAN FIRE AND CASUALTY INSURANCE COMPANY


H. F. Carlson
Claims Supervisor

HFC:kk

EXHIBIT

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EXHIBIT "21"

County of Salt Lake - State of Utah

FILE NO. 900907125

TLE: (✓ PARTIES PRESENT)
YRA L. TAYLOR,

COUNSEL: (✓ COUNSEL PRESENT)
: James A. McIntosh

Plaintiff.

: Attorney for Plaintiff

vs.

: Michael N. Martinez

ONALD H. OLSON, et al.,

: Attorney for Defendant

Defendants.

:

CLERK

HON. TIMOTHY R. HANSON

JUDGE

REPORTER

DATE:

BAILIFF

The above-referenced matter came before the Court for pretrial on September 29, 1992, at the hour of 2:00 p.m. Counsel for the plaintiff and the defendants were present, and met with the Court to discuss the issues involved in the trial which is presently scheduled for November 19, 1992.

Counsel for the parties presented their respective positions of liability and potential defenses thereto informally to the Court, and the Court discussed with counsel the nature of the claims and the defenses.

Counsel for the parties summarized the anticipated facts leading up to and including the accident which is the subject of the plaintiff's Complaint, and it appeared that there was little dispute with regard to the facts, including the conduct of the defendant Jennifer Heather Olson prior to and at the time of the accident in question.

Counsel for the plaintiff, as well as the defendant, advised the Court as to the nature of the claimed injuries of the plaintiff, and advised the Court as to the anticipated evidence relating to special damages and general damages.

000162

THIRD JUDICIAL DISTRICT
County of Salt Lake - State of Utah

FILE NO. 900907125

TITLE: (✓ PARTIES PRESENT)
MYRA L. TAYLOR.

COUNSEL: (✓ COUNSEL PRESENT)

Plaintiff.

VS.

RONALD H. OLSON, et al.,

Defendants.

CLERK

REPORTER

BAILIFF

HON. TIMOTHY R. HANSON

JUDGE

DATE:

Counsel presented their respective positions relating to the claims of punitive damages. The plaintiff may choose not to pursue punitive damages under the circumstances of this case, and will advise the Court as the trial date approaches whether or not that remains an issue, or whether or not the claim for punitive damages will be abandoned.

The parties agreed and the Court is willing to acquiesce in the presentation of evidence in this matter through proffer and/or affidavit, as opposed to the presentation of live testimony. Special damages and permanent partial impairment are not in substantial dispute, and the parties will likely be able to agree upon presentation of appropriate documentation as to those amounts and those percentages. The parties through their proffers and the expert testimony offered through reports and proffer will form a basis for imposition of general damages and/or punitive damages should punitive damages continue to be an issue.

The parties agreed that all depositions that have been taken may be published for the Court's consideration in this matter. The original of the depositions ^{IN} and respective counsel's files will be presented to the

000163

PAGE 2 OF 3

THIRD JUDICIAL DISTRICT
County of Salt Lake - State of Utah

FILE NO. 900907125

TITLE: (✓ PARTIES PRESENT)
YRA L. TAYLOR.

COUNSEL: (✓ COUNSEL PRESENT)

Plaintiff.

vs.

DONALD H. OLSON, et al.,

Defendants.

CLERK

REPORTER

BAILIFF

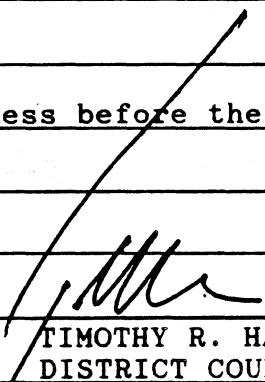
HON. TIMOTHY R. HANSON

JUDGE

DATE:

Court at the time of trial for formal filing. Based upon the agreement of the parties to publish depositions, the Court ordered the depositions published.

There being no further business before the Court on this cause, the pretrial concluded at 3:05 p.m.


TIMOTHY R. HANSON
DISTRICT COURT JUDGE

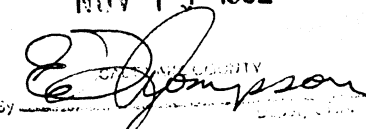
Copies to:
James A. McIntosh, Esq.
Michael N. Martinez, Esq.

EXHIBIT "22"

JAMES A. MCINTOSH, ESQ. -- No. 2194
JAMES A. MCINTOSH & ASSOCIATES P.C.
A Utah Professional Law Corporation
Attorney for Plaintiff
Suite 17, Intrade Bldg. South
1399 South 700 East
Salt Lake City, UT 84105
Telephone: (801) 487-7834

FILED DISTRICT COURT
THIRD JUDICIAL DISTRICT

NOV 19 1992

By  Timothy R. Hanson
CLERK OF DISTRICT COURT

IN THE DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

MYRA L. TAYLOR

Plaintiff

v.

RONALD H. OLSON, CAROL D.
OLSON, and JENNIFER HEATHER
OLSON

Defendants

STIPULATION

Civil No. 900907125PI

(Judge Timothy R. Hanson)

1. The parties individually and through their respective counsel of record, hereby stipulate and agree as hereinafter set forth.

2. The parties acknowledge the above-entitled matter came on regularly for final pretrial on September 29, 1992, at the hour of 2:00 p.m. and lasted for more than one hour. At this pretrial, the parties and the court agreed to certain procedures to be used at the time of trial for submitting testimony through proffers of proof, affidavits, medical reports, and other documentation. On

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October 1, 1992, the Honorable Timothy R. Hanson entered an order pertaining to the said pretrial and setting out the said trial procedures. The parties agree to follow Judge Hanson's procedures at the trial, which is scheduled to begin at 10:00 a.m. on Thursday, November 19, 1992.

3. The parties agree to be present in court on the said trial date to acknowledge and stipulate to any proffers of proof that are made through their respective counsel.

4. Counsel will bring to the trial all original depositions which are in their files and the parties agree all such original depositions may be published by the court and used by Judge Hanson to determine the outstanding issues in this case and the general damages to be awarded to the plaintiff.

5. Using the said procedures established at pretrial, the plaintiff will submit documentary evidence in support of her special damages. Based on these special damages and also the medical and dental reports to be submitted by the plaintiff, the parties agree to submit to the Honorable Timothy R. Hanson the issue of what general damages the plaintiff would be entitled to. Judge Hanson will have the sole discretion to determine the said general damages based on the evidence presented at trial and the stipulation of the parties with respect to the reasonableness of the said general damages. Judge Hanson will not be bound by any stipulation or agreement of the parties with respect to the general damages, but will be free to determine them according to his own personal review of the evidence submitted by the plaintiff.

6. It is recognized plaintiff's counsel represents not only the plaintiff, Myra L. Taylor, but also United Services Automobile Association ("USAA") which was the insurance carrier insuring the Taylor vehicle at the time of the accident described in the plaintiff's complaint, which complaint is by reference incorporated herein and made a part hereof. USAA's involvement in this case is to protect their subrogation rights with respect to both the uninsured motorist payment of some \$20,000.00 and also the no-fault payment for medical expenses, loss of wages, and domestic help or essential services of some \$22,200.10.

7. The plaintiff agrees to withdraw her claim for punitive damages against any of the defendants.

8. Judge Hanson will be asked to determine the amount of special and general damages to which the plaintiff is entitled with respect to each separate Count of the five (5) Counts described in her complaint and with respect to each claim made in each of the said five (5) Counts. Again, Judge Hanson will be invested with the sole discretion to make the said findings of fact, conclusions of law, and judgment based on his review of the evidence submitted at trial.

9. The defendants agree to waive their right to the normal thirty-day (30) appeal period allowed by the Utah Rules of Civil Procedure and the Utah Rules of Appellate Procedure. Accordingly, when the final judgment is entered, this matter will become final with respect to all issues set forth in the said judgment and the defendants will have no right to appeal said judgment.

10. After the court determines the amount of the judgment, including both special and general damages, the defendants agree to assign any and all claims they might have against their homeowners' insurance company, or any other insurance companies where there might be coverage pertaining to the facts set forth in the five (5) Counts of the plaintiff's complaint. The parties only know of the Olsons' homeowners' insurance coverage at the present time, however, this stipulation is broad enough to include any other insurance if such becomes identified in the future.

11. With respect to the assignment of their claims against their homeowners' insurance company as described in paragraph 10 above, the parties agree Myra L. Taylor will be entitled to pursue any and all claims against the defendants' homeowners' insurance carrier to the same extent the defendants would be entitled to pursue those claims under the terms of their policy or under the general common law or statutory law in the state of Utah. In this connection, the defendants agree Myra L. Taylor may appear as the sole party plaintiff in any subsequent lawsuit against the homeowners' insurance company, or may appear jointly with the said Olsons as parties plaintiffs, or she may designate the Olsons to appear as the party plaintiff in the said lawsuit. The election of who the party plaintiffs would be in the said lawsuit will be left up to the sole discretion of Myra L. Taylor to decide at the time the lawsuit is commenced.

12. With respect to the said "assignment" of the defendants' rights against their homeowners' insurance carrier as described in paragraphs 10 and 11 above, the said defendants agree to assign,

to the extent permitted by law, any and all claims they have against the said carrier to include, but not necessarily be limited to, the \$100,000.00 liability coverage, the liability of the carrier for any "excess" judgment over and above the said \$100,000.00 which the court may enter at the time of the trial, and any "additional" damages to which the Olsons might be entitled to such as personal tort actions for mental anguish, economic loss, damage to reputation, etc.. These claims also involve any and all claims which the defendants have for attorney fees they have incurred in the present action and any and all damages they have sustained as a result of the refusal of their homeowners' insurance carrier to defend them in the instant action and/or for the said carrier's breach of the duty of good faith dealing with the said defendants.

13. With respect to the said "assignment" as stated in paragraphs 10, 11, and 12 above, the defendants and each of them agree that they will cooperate with the plaintiff in any lawsuit which might later be filed against the defendants' homeowners' insurance company. The defendants direct their counsel, agents, and assigns to cooperate with the plaintiff in the said subsequent lawsuit, and counsel, agents, and assigns agree to do so. This cooperation is to be made without any remuneration of any kind being paid by the plaintiff to the defendants or their counsel. With respect to this "cooperation," the plaintiff acknowledges the defendants will not have any responsibility to pay for any costs or attorney fees in connection with any subsequent lawsuit which the plaintiff files against the defendants' homeowners' insurance

carrier. Plaintiff shall indemnify each co-plaintiff against any loss, costs, or damages which may or do accrue as a result of any action of co-plaintiff in the subsequent lawsuit.

14. With respect to the "Assignment" described above and in the event the defendants are not permitted by law to assign some portion of their claims against their homeowners' carrier to the plaintiff because the claims are personal in nature or for whatever other reasons, the defendants agree to appear as parties plaintiffs in any subsequent lawsuit commenced by Myra L. Taylor against the homeowners' carrier. Any monies collected by any of the defendants by virtue of these personal claims which cannot be assigned will be the sole property of the said Myra L. Taylor and the defendants agree to pay all of such monies to the said Taylor.

15. In exchange for the said "assignment" as described hereinabove, the plaintiff and USAA agree they will not execute on any of the personal assets of any of the three defendants, rather, the plaintiff will look solely for recovery from the defendants' homeowners' insurance carrier for payments on the said judgment.

16. The defendants agree to identify for the plaintiff at the time of trial the exact identity, including name, address, and telephone number, of their homeowners' insurance carrier. In this connection, the parties acknowledge the said carrier has been identified in letters written by their counsel as Ohio Casualty Insurance Company and also has been identified in letters from the insurance company as the "American Fire and Casualty Insurance Company." In this connection, the defendants agree to provide the plaintiff, at or before the time of trial, with a full and complete

copy of the homeowners' insurance policy, together with all endorsements which were in effect on October 17, 1987, the date of the accident described in the plaintiff's complaint.

17. The defendants represent and agree none of them have made any agreements and/or promises to their homeowners' insurance carrier that would release the carrier from any liability to the defendants for any of the acts, issues, claims, or assets stated in the plaintiff's complaint or that would impair in any way, the right of the defendants to pursue any claims they have under the terms of the homeowners' policy for failure of the carrier to defend the defendants in the instant lawsuit, for breach of the carriers' duty to deal in good faith with the defendants and/or for any other claims the defendants have against the carrier for any liability connected with the plaintiff's complaint and the carriers' duties with respect thereto. If there have been any such agreements, promises, or other documents signed or agreed to by the defendants then this Stipulation will be automatically null and void and any final judgment entered in this case will be without the benefit or protection of this Stipulation.

18. The parties and their respective counsel are signing this Stipulation to be used in connection with any final Findings of Fact, Conclusions of Law, and/or Final Judgment which the court enters in this matter. The parties agree and consent this Stipulation may be presented to the above-entitled court for approval, and if it is approved by the trial judge assigned to hear this case -- the Honorable Timothy R. Hanson -- this Stipulation may be incorporated into any of the court's final documents by

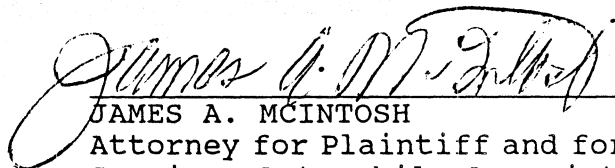
reference to the same extent as though each and every separate provision in this Stipulation had been included in the said documents.

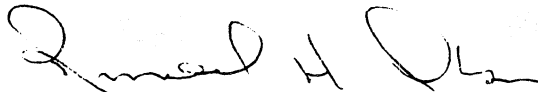
19. This Stipulation is binding on the parties hereto, their heirs, personal representatives, assignees, or successors. In this connection the parties state their intention to have this Stipulation survive the death of any of the parties.


DATED this 19th day of November 1992.



MYRA L. TAYLOR, Plaintiff

JAMES A. MCINTOSH & ASSOCIATES P.C.


JAMES A. MCINTOSH
Attorney for Plaintiff and for United
Services Automobile Association


RONALD D. OLSON, Defendant


CAROL D. OLSON, Defendant


JENNIFER HEATHER OLSON, Defendant

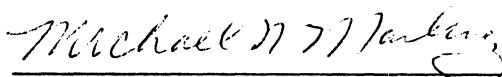

MICHAEL N. MARTINEZ
Attorney for Defendants

EXHIBIT "23"

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A P P E A R A N C E S

FOR THE PLAINTIFF:

James A. McIntosh
Attorney at Law
Suite 14 Intrade Bldg South
1399 South 700 East
Salt Lake City, Utah 84105

FOR THE DEFENDANTS:

Michael N. Martinez
Attorney at Law
4479 South Gordon Ln.
Murray, Utah 84107

1 PROCEEDINGS

2 November 19, 1992

3 Partial Transcript

4 THE COURT: What I intend to do, ladies and
5 gentlemen, and counsel in this matter, is to review the
6 exhibits that have been received. To the extent that I
7 believe it's necessary to relate these Findings of Fact
8 to particular witnesses, I want to review some of the
9 depositions. Inasmuch as the facts as to how the
10 accident occurred are not substantially in dispute, if at
11 all, I don't need to spend a lot of time on how this
12 accident occurred, except that I will read the factual
13 recitations to make a determination, because I'm willing
14 to make a finding of percentage of responsibility here to
15 determine the percentage of responsibility for the
16 accident between Ms. Taylor and Ms. Olson. I will
17 attempt to -- I won't attempt, I will, based on the
18 evidence that I have, make a determination as to that
19 percentage.

20 The other major issue that I'm primarily concerned
21 with in this matter is reading all the medical
22 information, reading the information that's been provided
23 in relation to the damages claimed in this matter by Ms.
24 Taylor, and attempting to put a figure to that. And in
25 reaching that type of figure, so you'll all understand

1 how that's done, many times these types of cases are
2 tried to a jury, and I tell a jury they are charged with
3 responsibility of putting a dollar figure on an injury.
4 And obviously that's not something you can calculate with
5 precision; it's somewhat subjective. I will attempt to
6 weigh and evaluate the -- a number of things that the
7 evidence may show. To the extent that the evidence in
8 this case shows permanent impairment, that's a factor
9 that I must take into consideration in determining
10 damages, what the lawyers and judges call pain and
11 suffering. And that's kind of a general catchall for
12 change of lifestyle, limitations on what people can do,
13 and what they can't do, actual pain that has occurred,
14 inconvenience, emotional upset that's related to that,
15 and the mental impact that runs with physical injuries.
16 I will attempt to evaluate all those things, and attach a
17 figure to it.

18 But like I say, there's no mathematical formula that
19 I tell juries about, or that I could apply myself.
20 There's really no way with any degree of precision,
21 because as Mr. Taylor pointed out, I'm sure if everybody
22 sitting in this courtroom could have had the power to
23 make this whole thing disappear, we'd all be a lot
24 happier. But the accident happened. It did happen.
25 There have been injuries as a result of the accident, and

1 the only way that the legal system that we have in this
2 country can compensate a person for injuries is
3 monetarily. There's no other way. Sometimes that's
4 woefully inadequate, but it's the only way we have to do
5 it. And so I will try and determine what I believe to be
6 a reasonable, and a fair figure for the damages that I
7 determine to exist.

8 And so what I think I will do, counsel, is this: I
9 may choose to issue a brief written memoranda about some
10 of my observations in relation to the evidence. I will
11 also review the Findings of Fact, and Conclusions of Law,
12 and the final judgment that's been proposed, and
13 determine whether or not what changes or additions or
14 deletions need to be made from those Findings of Fact,
15 and I'll pen and ink those in, and send you a copy of
16 those changes, and I'll ask Mr. McIntosh to prepare it in
17 final form. Once I have that document, then I will sign
18 a final judgment. And that will resolve this Court's
19 involvement in this matter, at least resolves this case
20 between Ms. Taylor, and the Olsons.

21 Also, I think the record ought to reflect at this
22 point in time that the Court has had some input into this
23 matter, and I am satisfied that both sides have carefully
24 evaluated their positions. Proceeding by way of proffer
25 is -- it's not unheard of, but it's not unusual in this

1 case. But if there is no disputed issues of fact with
2 regard to the manner in which this accident occurred, and
3 if there's no need to bring in witnesses to testify
4 because what they are going to say is not in substantial
5 dispute by the other side, then it seems foolish to spend
6 a number of days trying a case like this. So's that's
7 the reason that I agreed that we could proceed by way of
8 proffer in this case as opposed to calling in doctors,
9 and having them testify, and having everyone testify
10 directly. Some cases are pretty straight forward. This
11 appears to be one. And so there's no reason to spend a
12 lot of time determining what's going to be inevitable in
13 any event, certainly with regard to the issue of
14 liability. So when I say the issue of liability, I'm
15 talking about how the accident occurred. So I believe
16 proceeding by way of proffer in this case was and is
17 appropriate, and that's the reason that I have agreed to
18 do that, and I assume counsel were equally as comfortable
19 with that, otherwise you wouldn't have agreed to proceed
20 in that fashion.

21 It also appears to the Court that the stipulation
22 has been carefully drafted, that it has been reviewed at
23 some length by both sides, and that both sides have had
24 input, and up until this morning, and including this
25 morning, there were ongoing discussions with regard to

1 the proper contents of the stipulation, for example, and
2 the Findings of Fact that have been offered in this
3 matter. So it appears that there has been a careful
4 review not only for the plaintiff, but also for the
5 defendants as to their position, and that this
6 stipulation, and the facts that have been agreed to as
7 far as this accident occurred, as far as how this
8 accident occurred have been done at arms-length. And I
9 just don't want to leave the impression to anyone,
10 because it's not my impression that the defendant are
11 just here to do whatever the plaintiffs choose to have
12 them do to get this matter over with, I do not believe
13 that has been the case. That has not been my
14 observation.

15 And so I'm satisfied this is an arms-length
16 transaction, if I can use that term. Certainly arms-
17 length negotiations as to how to resolve this matter, and
18 a careful analysis of what the facts are, and the facts
19 are basically as I've already said, not in substantial
20 dispute. So with those explanations, ladies and
21 gentlemen, that's what I intend to do. I wish I could
22 tell you how soon I was going to have it done --
23 certainly within the week. And barring some unforeseen
24 crisis, I would hope to have this done before the
25 holidays next Thursday, and in the mail back to your

1 attorneys so we can finalize this matter. Anything else,
2 counsel?

3 MR. McINTOSH: Your Honor, may I give the
4 Court three copies -- copies of three cases that just
5 have some general verdicts and amounts that have been
6 found in other states?

7 THE COURT: Certainly

8 MR. McINTOSH: With respect to similar type
9 injuries. One of the cases is for \$450,000, one of the
10 cases is for \$150,000, and one of them is for \$75,000. I
11 wanted you to have both ends of the spectrum. Those are
12 probably the three best samplings I could find of this
13 type of injury, and what other courts have done.

14 THE COURT: I'll be glad to consider those.
15 All right. And, of course, so that everyone understands,
16 perhaps with a little more clarity how one reaches the
17 subjective figures, not only do I rely upon my own
18 evaluation of what the evidence shows, and the
19 significance of the injuries, and how that might be
20 translated into a dollar figure, I want this record to
21 reflect, because I don't know who might be reading it in
22 the future, but I want this record to reflect that over
23 the last ten years there have been a number of personal
24 injury cases tried to this Court, so I'm familiar with
25 what juries have done, what I have done on cases that may

1 bear some resemblance to this in the way of damages, and
2 also some significant experiences as a trial lawyer
3 before taking the bench, because I specialized in this
4 type of area. So there's something to draw on besides
5 just kind of plucking a figure out of the sky. So I will
6 attempt to make it reasonable, but appropriate. So,
7 that's what we'll do.

8 Thank you for your efforts, counsel. I think you've
9 handled this in an appropriate fashion in view of the
10 circumstances, and I commend you on your willingness to
11 agree where you could to save your clients expense and
12 trauma going through a protracted piece of litigation.
13 All right. We'll be in recess. Again, thank you for
14 your good efforts.
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REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, BUNNY CAROL NEUENSCHWANDER, do hereby
certify:

That I am a Certified Shorthand Reporter,
License No. 152, and one of the official court reporters
of the State of Utah; that on the 19th day of November,
1992, I attended the within matter and reported in
shorthand the proceedings had thereat; that later I
caused my said shorthand notes to be transcribed into
typewriting, and the foregoing pages, numbered from 3 to
9, inclusive, constitute a partial transcript, true and
correct account of the same to the best of my ability.

Dated at Salt Lake City, Utah, this 14th day of
December, 1992.



BUNNY CAROL NEUENSCHWANDER, CSR, RPR

EXHIBIT "24"

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

JAN - 6 1943

* * *

MYRA L. TAYLOR,

Plaintiff,

vs.

RONALD H. OLSON, CAROL D.
OLSON, and JENNIFER HEATHER
OLSON,

Defendant.

Case No. 900907125

Judge Timothy R. Hanson

BE IT REMEMBERED that the above-entitled case came on regularly for trial before the Honorable Timothy R. Hanson, a Judge of the Third Judicial District Court of the State of Utah, at Salt Lake City, Salt Lake County, State of Utah on the 19th day of November, 1992, at 10:00 a.m., and that the following proceedings were had.

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A P P E A R A N C E S

FOR THE PLAINTIFF:

James A. McIntosh
Attorney at Law
Suite 14 Intrade Bldg South
1399 South 700 East
Salt Lake City, Utah 84105

FOR THE DEFENDANTS:

Michael N. Martinez
Attorney at Law
4479 South Gordon Ln.
Murray, Utah 84107

1 P R O C E E D I N G S

2 November 19, 1992

3 Partial Transcript

4 THE COURT: Mr. Martinez?

5 MR. MARTINEZ: We really have nothing to add,
6 Your Honor, other than I would proffer to the Court that
7 if asked, each of the defendants would agree with the
8 factual statement as stated in the Findings of Fact. And
9 for the record, Your Honor, on the stipulation,
10 stipulation paragraph number sixteen states that on this
11 day, on the date of trial, defendants would provide the
12 homeowner's policy, carrier's issued policy, which we
13 have provided, so the record will note that. And also
14 just for clarification, which I've discussed with Mr.
15 McIntosh, for paragraph seventeen, it states that the
16 defendants nor any of them have made any agreement or
17 released the insurance carrier, the homeowner's insurance
18 carrier from any liability. And that applies strictly to
19 any agreement outside of the policy. Other than that,
20 Your Honor, we have nothing to add or state.

21 THE COURT: All right. Let me -- so that we
22 have a response under oath on many of these issues, Mr.
23 and Mrs. Olson, and Ms. Olson, would you raise your
24 right-hand, and be sworn, please. And I'll ask you some
25 questions about these facts.

1 (Mr. and Mrs. Olson and Ms. Olson were sworn.)
2 THE COURT: Please be seated. Have all three
3 of you had an opportunity to read this stipulation, your
4 signatures on it.
5 MR. OLSON: Yes.
6 MRS. OLSON: Yes.
7 MS. OLSON: Yes.
8 THE COURT: And have you also had an
9 opportunity to review the document called Findings of
10 Fact.
11 MR. OLSON: Yes, we did, Your Honor.
12 THE COURT: All three of you have read that?
13 MS. OLSON: Yes.
14 MS. OLSON: Yes.
15 THE COURT: In both the stipulation, and
16 Findings of Fact, there are certain recitations as to the
17 manner in which this accident occurred, and the
18 participation of Ms. Olson, and Ms. Taylor, and how this
19 accident occurred. Now, I recognize all three of you
20 weren't there, but to the extent that you have personal
21 knowledge, or to the extent that you have been advised as
22 to what occurred on that occasion, do these Findings of
23 Fact represent the facts as they occurred as you
24 understand them to be, and as you recollect them to be to
25 the extent you have personal knowledge?

1 MR. OLSON: Yes.
2 MRS. OLSON: Yes.
3 MS. OLSON: Yes.
4 THE COURT: All three of you agree?
5 MR. OLSON: Yes.
6 MRS. OLSON: Yes.
7 MS. OLSON: Yes.
8 THE COURT: The reason I ask these questions,
9 so the record is clear on this, I am satisfied that the
10 factual recitation of both the stipulation, and the
11 findings are basically the agreement of both parties, and
12 I've heard from the Taylors, and now I've heard from the
13 three of you, and it appears that there's agreement
14 between the parties as to what the facts basically are
15 with regard to how this accident occurred. And so that's
16 the reason I've asked those questions. I just wanted to
17 make sure that you felt that they were a satisfactory
18 recitation of the facts.

19 All right. Very good. Anything further from the
20 defendant, then?

21 MR. MARTINEZ: None, Your Honor. We'd rest.

22 MR. McINTOSH: Nothing further, Your Honor.

23 Thank you.

24 * * *

25

REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, BUNNY CAROL NEUENSCHWANDER, do hereby
certify:

That I am a Certified Shorthand Reporter,
License No. 152, and one of the official court reporters
of the State of Utah; that on the 19th day of November,
1992, I attended the within matter and reported in
shorthand the proceedings had thereat; that later I
caused my said shorthand notes to be transcribed into
typewriting, and the foregoing pages, numbered from 3 to
5, inclusive, constitute a partial transcript, true and
correct account of the same to the best of my ability.

Dated at Salt Lake City, Utah, this 5th day of
January, 1993.

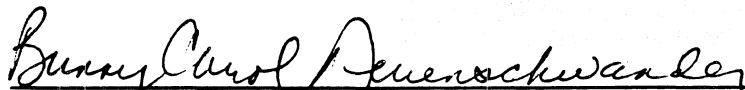

BUNNY CAROL NEUENSCHWANDER, CSR, RPR

EXHIBIT "25"

JAMES A. McINTOSH, ESQ. -- No. 2194
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FILED DISTRICT COURT
Third Judicial District

JAN 25 1993

SALT LAKE COUNTY
Deputy Clerk

IN THE DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

MYRA L. TAYLOR

Plaintiff

v.

RONALD H. OLSON, CAROL D.
OLSON, and JENNIFER HEATHER
OLSON

Defendants

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Civil No. 900907125PI

(Judge Timothy R. Hanson)

The above-entitled matter, having come on regularly for trial on Thursday, November 19, 1992, before the Honorable Timothy R. Hanson, Judge of the above-entitled court, hearing this case without a jury; the plaintiff, Myra L. Taylor, being present in court and represented by the law firm of James A. McIntosh & Associates P.C., a Utah professional law corporation, appearing through counsel, James A. McIntosh; the defendants, Ronald H. Olson, Carol D. Olson, and Jennifer Heather Olson being present in court and being represented by counsel, Michael N. Martinez; the court having heretofore entered a Pretrial Order establishing the procedures for presenting evidence at the time of the trial; said Pretrial Order being incorporated herein by reference and being made a part hereof; the court having received the various proffers

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of proof, affidavits, medical reports, and other evidence submitted by the plaintiff in support of the allegations raised in each of the five (5) Counts of her complaint; the court having taken the proffer of testimony from the defendants, Ronald H. Olson and Carol D. Olson, said proffers being made by their counsel, Michael N. Martinez, and approved by the said Olsons; the court having published the deposition of all persons heretofore deposed in this action; the court having reviewed the said proffers of proof, affidavits, medical reports, and other evidence and being fully advised in the premises; hereby enters its findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1. On October 17, 1987, ("accident date") the defendant Ronald H. Olson was the owner of a 1974 Volkswagen, two-door sedan, green in color ("Volkswagen"). Mr. Olson had purchased the said Volkswagen from a previous owner Daniel Park Lake. On the said October 17, 1987, the Volkswagen was not registered in the state of Utah and was uninsured.

2. On the said accident date the said Ronald H. Olson was married to the defendant Carol D. Olson and was living with his wife and family at 1930 Logan Avenue, Salt Lake City, Utah, 84108. On the said accident date, the defendant Jennifer Heather Olson was sixteen years of age, having been born on April 2, 1971.

3. On the said accident date, the defendant Jennifer Heather Olson ("Heather") was driving the said Volkswagen at approximately 11:55 P.M. on Yalecrest Avenue (1015 South in Salt Lake City, Utah)

at its intersection with 1900 East ("accident scene"). There was a "yield" traffic sign facing Valecrest Avenue at the said intersection, which sign required drivers on Valecrest Avenue to yield the right-of-way to persons on 1900 East.

4. At the said time and place described in paragraph 3 above, the said defendant Heather was driving under the influence of intoxicating beverages and was driving the Volkswagen with a blood-alcohol content of approximately .14 grams in violation of § 41-6-44, Utah Code Annotated, 1953, as amended.

5. A few minutes prior to the time and place described in paragraph 3 above, said defendant Heather was involved in a "hit and run" accident in an area less than one mile from the said accident scene. This hit and run involved another motorist by the name of Michelle Paxton. Heather was being pursued by Ms. Paxton through a residential neighborhood at the time she reached the accident scene.

6. At approximately 11:55 P.M. on the said accident date and at the accident scene, the plaintiff Myra L. Taylor was driving her 1984 Subaru 640 station wagon ("Subaru") in a northerly direction along 1900 East Street and in a careful and prudent manner.

7. On or about the said 11:55 P.M. on the said accident date and at the accident scene, the defendant Heather negligently, ("negligence") operated her Volkswagen thereby causing a collision with the Subaru being driven by the plaintiff. The specific grounds of negligence include, but are not necessarily limited to, the following:

- (a) A failure to keep a proper lookout.
- (b) Failure to yield the right-of-way to Myra Taylor who was driving her car on 1900 East.
- (c) Driving too fast for existing conditions.
- (d) Driving under the influence of intoxicating beverages with a blood-alcohol content of approximately twice the limit established by the Utah statutes for a presumption of driving under the influence of intoxicating beverages.
- (e) Failure to take evasive action to avoid the accident.
- (f) Failure to keep her motor vehicle under control.
- ~~out (g) Driving a motor vehicle that was not insured and also not registered.~~
- ~~out (h) Driving a motor vehicle with license plates which had not been issued for the automobile Heather was driving.~~

8. As a sole, direct and proximate cause of Heather's negligence, Myra L. Taylor was then and there seriously and permanently injured. She suffered bruises, contusions, lacerations, shock, headache, muscle spasms, numbness in her joints and members, scarring, strains, fractures, and other damages and personal injury so as to render the plaintiff partially and permanently disabled for the balance of her life.

9. The plaintiff has suffered a loss of the quality of life and enjoyment of life she experienced prior to October 17, 1987, and has also suffered mental anguish, emotional pain and suffering and other mental and emotional trauma as more fully described in the evidence plaintiff provided at trial, some of which is dis-

cussed hereafter.

10. Prior to the time of the said accident on October 17, 1987, the plaintiff was ^{IN EXCELLENT} ~~the picture of~~ health and vigor. She was a healthy mother who had given birth to and raised twelve (12) children. She was accustomed to taking long trips as a family from coast-to-coast in the family car. She would drive the family car, pack the luggage and the food, work tirelessly and enthusiastically completing these tasks as a wife and mother. By comparison, the plaintiff is unable to ride in the family car at the time of trial without hunching her back and walking bent over because of back spasms and pain.

11. Prior to the time of the accident, the plaintiff enjoyed sports. She had played tennis, golf, bowling, horseback riding, motorcycling, hiking, waterskiing, camping, badminton, jumping on the trampoline with her children, and dancing. Since the accident, the plaintiff has been unable to participate in any of these activities and is by comparison an "invalid" with respect to her lifestyle prior to the accident.

12. The plaintiff's treating physician, King S. Udall, M.D., gave his written opinion in a letter dated approximately one (1) month prior to the trial that the plaintiff has sustained a ten percent (10%) permanent impairment and disability of her total person as a result of the accident. Dr. Udall stated that, as a result of the accident, Myra L. Taylor had to alter her life and career significantly. Because of the accident Dr. Udall states Ms. Taylor was unable to work on a full-time basis either lifting or providing the usual services of a registered nurse. As a result,

she did not receive commensurate wages for the amount of time she missed as working half-time as she did as a full-time employee. Dr. Udall further states as a result of the accident the plaintiff has difficulty with her housework and cannot do routine housework as before or do anything which involves heavy work using the upper extremities. After listening to the proffers of proof and the other evidence submitted at trial, the court concurs in the findings by Dr. Udall as more fully stated in his October 20, 1992 letter to plaintiff's counsel, James A. McIntosh, Esq..

13. As a sole, direct and proximate cause of the accident, the plaintiff has incurred a loss of wages for the period of time October 18, 1987, through October 5, 1991, in the amount of \$65,861.84. This finding is based on the affidavit of Margie Q. Richins, dated November 9, 1992. Ms. Richins is the Civilian Payroll Supervisor for the Veteran's Administration Medical Center where the plaintiff, Myra L. Taylor, worked for many years as a Registered Nurse.

14. The court finds it was reasonable and necessary for the plaintiff to take the depositions of certain persons, to wit, Kristi Bringhurst, Jenny Pia, Steve Ebert, Steve Jones, Scott Levy, James Levy, Mark Muir, Jeff Gertino, and Heidi Olson. The court further finds it was reasonable and necessary for the plaintiff to pay the said persons \$17.00 each to attend their depositions and to pay the amount of \$232.00 for the service of subpoenas on the said persons together with the further amount of \$374.80 to the court reporter for taking and transcribing the said depositions. The court finds this total of \$759.80 is a reasonable and necessary

expense incurred by the plaintiff in this action and is to be taxed as part of the costs to be awarded to the plaintiff.

15. In addition to the said \$65,861.84 lost wages described in paragraph 13, the court finds the plaintiff has also incurred the following ^{REASONABLE AND NECESSARY} special damages from the time of the accident through the time of the trial.

(a) Essential Services -- \$6,200.00.

(b) Medical Expenses -- \$5,178.75

(c) Expert Witness Fees to Frank Grant for Accident, Investigation and Reconstruction Services -- \$718.75.

16. In addition to the ten percent (10%) total person impairment and disability noted by Dr. King S. Udall as described above, the plaintiff also sustained injuries to her nose and teeth, as more fully described in medical reports from Dr. Bryce D. Allred, M.D., and from her dentists, Vee Boyd Hair, D.M.D., and Scott B. Hair, D.D.S..

17. The plaintiff was able to resume full-time employment at the Veteran's Administration Hospital on or about October 5, 1991. The said full-time employment necessitated a change in the type and nature of the work plaintiff had been performing prior to the accident and required a career change as more fully noted in Dr. Udall's medical report and in the plaintiff's own testimony.

18. The court finds Myra L. Taylor's physical, mental, and emotional disabilities will continue for the rest of her natural life and will interfere with her enjoyment of life as a wife and a mother, and will deprive her of the benefits and enjoyment of life which she had prior to the time of the accident as more fully

set forth hereinabove in these findings. For all of these reasons, the court finds the plaintiff is entitled to ^{125,000}~~\$250,000.00~~ as reasonable and full compensation for the general damages she has sustained from the time of the accident to the time of trial and from the trial through the remainder of her natural life. In this connection, the court finds the plaintiff was born on January 28, 1943, and at the time of the accident, on October 17, 1987, was forty-four (44) years of age. The plaintiff had a life expectancy at the time of the accident of approximately thirty-six (36) years. The court takes judicial notice of the plaintiff's life expectancy which can also be verified in the legal encyclopedias such as the **DESK BOOK** in American Jurisprudence "Second Edition" Cumulative Supplement issued in April of 1991. The mortality tables are found in the said publication as Items numbers 159, 160, and 161.

19. The parties have submitted to the court a proposed "Stipulation" dated November 19, 1992, which provides for an assignment after judgment has been entered of the defendant's claim against their homeowners' insurance company for failure and refusal to defend the defendants in this instant lawsuit, for failure to pay the policy limits of \$100,000.00, for any excess judgment which might be entered in this action, and for any additional claims which the defendants might have against their homeowners' insurance carrier. As consideration for the said assignment, the plaintiff agrees not to execute on the defendants' personal property. The court finds the Stipulation is reasonable and adopts the terms of the said Stipulation as though they were fully set forth in these findings.

20. The court finds there has been no collusion between the plaintiff and the defendants with respect to the said Stipulation or with respect to assigning the defendants' rights to the plaintiff with respect to the defendants' homeowners' insurance carrier. The parties have submitted correspondence between counsel for the plaintiff and counsel for the defendants as well as correspondence between counsel for the defendants and the homeowners' insurance claims office and the attorney for the homeowners' insurance company. The court finds the said documents have kept the homeowners' insurance company apprised of this legal action and have given the said company every chance to appear in this case and to represent the defendants herein. The court finds the said insurance company has not appeared in this action in any capacity whatsoever through the date of the trial.

21. The plaintiff withdrew her claim for punitive damages at the trial.

22. The court finds the plaintiff has proved all the allegations with respect to each of the claims in Counts 1, 2, 3, 4, and 5 of the plaintiff's complaint except for the claim for punitive damages against the defendant, Heather Olson, as set forth in Count 2 which claim the plaintiff withdrew at trial.

23. With respect to the allegations in Count 5 of the plaintiff's complaint, the court specifically finds the defendants, Ronald H. Olson, and his wife, Carol D. Olson, were negligent in failing to supervise and control the activities of their minor child Jennifer Heather Olson. The court finds the said parents knew the said minor child was taking the Volkswagen car from the

parents' residence and had used it on several occasions prior to the time of the accident. The court also finds the parents knew that their daughter had consumed alcoholic beverages on occasions prior to the time of the accident and was in the habit of attending parties with friends who the parents knew drank intoxicating beverages. The court further finds the parents had the duty and responsibility to prevent the minor child from taking the Volkswagen automobile which was uninsured and which was not registered, but the parents did not take the necessary steps and precautions to prevent the minor child from using the automobile, either on prior occasions or at the time of the accident on October 17, 1987. The court further finds the parents' lack of supervision and control over the minor child was the sole, direct, and proximate cause of the accident for the reasons stated in this paragraph and for the other reasons more fully described in Count 5 of the complaint, all of which the court finds are fully established by the evidence in this case.

24. Section 41-2-115, Utah Code Annotated, 1953, as amended, provides that any negligence of a minor younger than eighteen (18) years of age when operating a motor vehicle upon a highway is imputed to the person who has signed the application of the minor for a permit or license. The said section further provides the person signing the application for a permit or a license is jointly and severally liable with the minor for any damages caused by the negligent misconduct.

25. At the time of the accident as described above in these findings, the defendant Ronald H. Olson had signed the application

for a permit or license of the defendant minor Jennifer Heather Olson. Pursuant to § 41-2-115 the said Ronald H. Olson is jointly and severally liable with Heather for any and all of the damages sustained by Myra L. Taylor as more fully described above in these findings.

26. Section 41-2-116, Utah Code Annotated, 1953, as amended, provides that the owner of a motor vehicle causing or knowingly permitting a minor younger than eighteen (18) years of age to operate the vehicle upon a highway or a person who gives or furnishes the motor vehicle to the minor, are each jointly and severally liable with the minor for any damages caused by the negligence of the minor in operating the vehicle.

27. The defendant Ronald H. Olson is jointly and severally liable with his minor daughter Heather pursuant to § 41-2-116 for any and all damages negligently caused by the said minor to the person of Myra L. Taylor as set forth hereinabove in these findings.

28. The defendants Ronald H. Olson and Carol D. Olson are the parents of the defendant Jennifer Heather Olson. On October 17, 1987, the said parents were living in the same household with the said minor child. On the said date the said parents negligently permitted their minor daughter to use the Volkswagen automobile which was under the control of the said parents. At the said time, the parents knew or should have known their minor daughter intended to or was likely to use the motor vehicle and to conduct herself in an activity and in a manner as to create an unreasonable risk of harm to others.

29. The said parents had previously known prior to the said accident date about Heather's drinking intoxicating beverages; however, the said parents failed to take adequate precautions or to properly instruct their minor child about the dangers of driving while under the influence of alcohol.

30. The parents further failed to take the necessary precautions to see their minor child would not take the Volkswagen automobile on the highways in an unregistered condition and without the vehicle insurance required by the statutes of the state of Utah.

31. As parents of the said minor child Heather, the defendants Ronald H. Olson and Carol D. Olson had a duty to supervise and control the conduct of the said minor child so as to prevent the minor child from negligently harming others or from so conducting herself as to create an unreasonable risk of bodily harm to others such as Myra L. Taylor.

32. The said parents knew or had reason to know they had the ability to control Heather and they knew or should have known of the necessity and opportunity for exercising such control. The parents knew the automobile did not contain current valid registration as required by Utah statutes nor was the Volkswagen automobile insured for personal injury or property damage to others as required by Utah statutes.

33. The parents knew the minor child had driven the car without registration and without insurance on previous occasions; however, the parents did not exercise the required supervision and control to stop Heather from using it on the accident date.

Rather, they allowed the minor child to have access to the keys to the said automobile, to install improper license plates on the said automobile, and to otherwise be able to use and operate the said automobile.

34. The parents also knew that on prior occasions as well as on the accident date the minor child Heather had been using license plates from her older sister Heidi's automobile, the said use being in violation of the state statutes pertaining to motor vehicles. Notwithstanding this knowledge, the said parents did not ensure Heather would discontinue this practice and the parents thereby permitted the minor child to take the Volkswagen on the public streets and highways in the state of Utah with an improper registration and without adequate insurance.

35. The parents knew the minor child had consumed alcoholic beverages prior to the accident date. The parents also knew the minor child consorted with other friends and acquaintances who were accustomed to drinking alcoholic beverages when they were together.

36. Notwithstanding this knowledge of Heather's drinking habits, the parents allowed Heather to have access to the Volkswagen which had invalid license plates, lacked adequate insurance, and under circumstances where the parents knew or should have known Heather was attending a party where intoxicating beverages were going to be consumed and knew or should have known that Heather may be driving the motor vehicle after consuming the said intoxicating beverages.

37. The parents had the ability to control Heather's access to and use of the said Volkswagen, and also knew the necessity for

exercising the said control; however, they neglected to so control or supervise Heather to prevent her from using the said Volkswagen under the circumstances set forth in Count 5 of the plaintiff's complaint.

38. The parents were negligent in failing to retain sufficient control and discipline over their minor daughter Heather and in failing to provide adequate supervision for Heather to insure Heather would not take the Volkswagen automobile under the circumstances set forth in the complaint.

39. This lack of control and supervision on the part of the parents constitutes negligence on their part.

40. The said parent's negligence contributed as a proximate and direct cause to the accident on October 17, 1987, as described more fully hereinabove in these findings. As a direct and proximate result of this negligence on the part of the parents, the plaintiff sustained the damages which she claims in the preceding Counts in this complaint.

CONCLUSIONS OF LAW

1. The plaintiff is entitled to judgment against the defendants and each of them jointly and severally on Counts 1, 3, 4, and 5 of the plaintiff's complaint for the amount of \$77,959.34^{\$125,000} special damages and the amount of ~~\$250,000.00~~ general damages, together with the amount of \$834.80 as costs.

2. The Stipulation of the parties dated November 19, 1992, should be approved by the court and is by reference incorporated

into these conclusions as though it were fully set out herein.

DONE IN OPEN COURT THIS 19TH DAY OF NOVEMBER 1992.

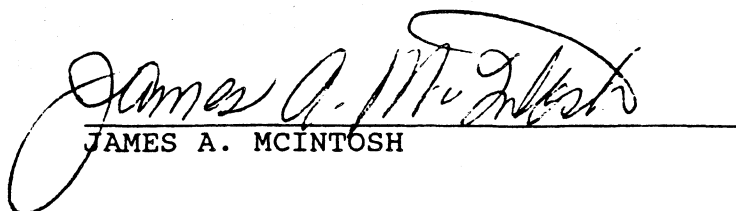
BY THE COURT

TIMOTHY R. HANSON
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of November, 1992, a true and correct copy of the above and foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW was hand delivered to the following:

Michael N. Martinez, Esq.
4479 Gordon Lane, Suite 100
Salt Lake City, UT 84107



JAMES A. MCINTOSH

EXHIBIT "26"

JAMES A. McINTOSH, ESQ. -- No. 2194
JAMES A. McINTOSH & ASSOCIATES P.C.
A Utah Professional Law Corporation
Attorney for Plaintiff
Suite 17, Intrade Bldg. South
1399 South 700 East
Salt Lake City, UT 84105
Telephone: (801) 487-7834

FILED DISTRICT COURT
Third Judicial District

JAN 22 1993

SALT LAKE COUNTY
By *E. Thompson*

Unsigned

IN THE DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

MYRA L. TAYLOR

Plaintiff

v.

RONALD H. OLSON, CAROL D.
OLSON, and JENNIFER HEATHER
OLSON

Defendants

FINAL JUDGMENT

Civil No. 900907125PI

(Judge Timothy R. Hanson)

The above-entitled matter, having come on regularly for trial on Thursday, November 19, 1992, before the Honorable Timothy R. Hanson, Judge of the above-entitled court, hearing this case without a jury; the plaintiff, Myra L. Taylor, being present in court and represented by the law firm of James A. McIntosh & Associates P.C., a Utah professional law corporation, appearing through counsel, James A. McIntosh; the defendants, Ronald H. Olson, Carol D. Olson, and Jennifer Heather Olson being present in court and being represented by counsel, Michael N. Martinez; the court having heretofore entered a Pretrial Order establishing the procedures for presenting evidence at the time of the trial; said Pretrial Order being incorporated herein by reference and being made a part hereof; the court having received the various proffers

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of proof, affidavits, medical reports, and other evidence submitted by the plaintiff in support of the allegations raised in each of the five (5) Counts of her complaint; the court having taken the proffer of testimony from the defendants, Ronald H. Olson and Carol D. Olson, said proffers being made by their counsel, Michael N. Martinez, and approved by the said Olsons; the court having published the deposition of all persons heretofore deposed in this action; the court having reviewed the said proffers of proof, affidavits, medical reports, and other evidence and being fully advised in the premises; the court heretofore entered its findings of fact and conclusions of law, which are by reference incorporated herein and made a part hereof;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS A FINAL JUDGMENT IN THIS MATTER AS FOLLOWS:

1. The plaintiff, Myra L. Taylor, is hereby awarded judgment against the defendants, Ronald H. Olson, Carol D. Olson, and Jennifer Heather Olson, and each of them jointly and severally, on Counts 1, 3, 4, and 5 of the plaintiff's complaint for the amount of \$77,959.34 special damages, and ^{125,100.} ~~\$250,000.00~~ general damages together with the plaintiff's costs incurred herein in the amount of \$834.80.

2. The court approves and adopts the Stipulation signed by the parties on November 19, 1992.

DONE IN OPEN COURT THIS 19TH DAY OF NOVEMBER 1992.

BY THE COURT

TIMOTHY R. HANSON
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of November, 1992, a true and correct copy of the above and foregoing FINAL JUDGMENT was hand delivered to the following:

Michael N. Martinez, Esq.
4479 Gordon Lane, Suite 100
Salt Lake City, UT 84107

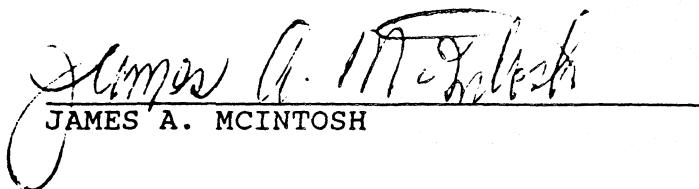

JAMES A. MCINTOSH

EXHIBIT "27"

Third Judicial District Court

Courts Building
240 East Fourth South
Salt Lake City, Utah 84111
(801) 535-5677



TIMOTHY R. HANSON
DISTRICT JUDGE

JAN 25 1993

January 25, 1993

SALT LAKE COUNTY
E. E. Thompson

James A. McIntosh, Esq.
1399 South 700 Est, Suite 17
Salt Lake City, Utah 84105

Michael N. Martinez, Esq.
4479 Gordon Lane, Suite 100
Salt Lake City, Utah 84107

Re: Myra L. Taylor v. Ronald H. Olson, et al
Civil No. 900907125

Gentlemen:

I have had an opportunity to review in detail the exhibits that were offered during the trial in the above-referenced matter. I have also reviewed those exhibits in connection with the proposed Findings of Fact and Conclusions of Law, and the Final Judgment submitted by Mr. McIntosh. Having due consideration for the medical information submitted, I am satisfied that the proposed Findings of Fact and Conclusions of Law are appropriate in relation to the issue of special damages, such as lost wages, essential services and medical expenses, and am willing to adopt those provisions of the Findings of Fact and Conclusions of Law as the Court's. As to general damages, I believe the evidence supports a general damage verdict in the amount of \$125,000.00, and have made the appropriate pencil changes on the original Findings of Fact, Conclusions of Law, and Final Judgment. On page 5, I was of the opinion that there should be a change in wording to include in paragraph 10 on the second line the statement that the plaintiff was in excellent health and vigor, as opposed to "the picture of" health and vigor. I have made that pencil change as well.

In reviewing the specific findings of negligence in paragraph 7 on page 4 of the proposed Findings, I note that subpart (g) suggests that driving a motor vehicle that was not insured and also not registered constitutes negligence, and in item (h) that driving a motor vehicle with license plates which

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James A. McIntosh, Esq.
Michael N. Martinez, Esq.

-2-

January 25, 1993

had not been issued for the automobile Heather was driving also constitutes negligence. While such conduct may be in violation of state statute, I do not believe that that would be an appropriate finding for negligence as to the conduct of defendant Heather Olson at the time and place of the accident in question. I cannot see how the vehicle being uninsured, nor having inappropriate plates in any way contributed to the negligent conduct of Ms. Olson's driving pattern up to the point of the accident.

Accordingly, unless there is something that I have overlooked, it would appear that paragraph 7(g) and (h) should be removed from the Findings of Fact.

I include the original Findings of Fact and Conclusions of Law, and the original Final Judgment in Mr. McIntosh's copy of this letter to counsel. Please make the appropriate changes in accordance with the pencil changes noted above and found on the original documents themselves, and resubmit them, at which time the Court would be in a position to sign the Findings of Fact, Conclusions of Law, and the Final Judgment immediately.

All other Findings of Fact, Conclusions of Law, and the Final Judgment appear to be appropriate in form, and are adopted as presented as the Court's Findings of Fact, Conclusions of Law, and Final Judgment.

Please feel free to contact me if there are any further questions regarding this matter.

Very truly yours,

Timothy R. Hanson
District Court Judge

TRH:jsh
Enclosure

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EXHIBIT "28"

JAMES A. MCINTOSH, ESQ. -- No. 2194
JAMES A. MCINTOSH & ASSOCIATES P.C.
A Utah Professional Law Corporation
Attorney for Plaintiff
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Telephone: (801) 487-7834

JAN 27 1993

Emily Simpson
SALT LAKE COUNTY

IN THE DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

MYRA L. TAYLOR

Plaintiff

v.

RONALD H. OLSON, CAROL D.
OLSON, and JENNIFER HEATHER
OLSON

Defendants

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Civil No. 900907125PI

(Judge Timothy R. Hanson)

The above-entitled matter, having come on regularly for trial on Thursday, November 19, 1992, before the Honorable Timothy R. Hanson, Judge of the above-entitled court, hearing this case without a jury; the plaintiff, Myra L. Taylor, being present in court and represented by the law firm of James A. McIntosh & Associates P.C., a Utah professional law corporation, appearing through counsel, James A. McIntosh; the defendants, Ronald H. Olson, Carol D. Olson, and Jennifer Heather Olson being present in court and being represented by counsel, Michael N. Martinez; the court having heretofore entered a Pretrial Order establishing the procedures for presenting evidence at the time of the trial; said Pretrial Order being incorporated herein by reference and being made a part hereof; the court having received the various proffers

of proof, affidavits, medical reports, and other evidence submitted by the plaintiff in support of the allegations raised in each of the five (5) Counts of her complaint; the court having taken the proffer of testimony from the defendants, Ronald H. Olson and Carol D. Olson, said proffers being made by their counsel, Michael N. Martinez, and approved by the said Olsons; the court having published the deposition of all persons heretofore deposed in this action; the court having reviewed the said proffers of proof, affidavits, medical reports, and other evidence and being fully advised in the premises; hereby enters its findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1. On October 17, 1987, ("accident date") the defendant Ronald H. Olson was the owner of a 1974 Volkswagen, two-door sedan, green in color ("Volkswagen"). Mr. Olson had purchased the said Volkswagen from a previous owner Daniel Park Lake. On the said October 17, 1987, the Volkswagen was not registered in the state of Utah and was uninsured.

2. On the said accident date the said Ronald H. Olson was married to the defendant Carol D. Olson and was living with his wife and family at 1930 Logan Avenue, Salt Lake City, Utah, 84108. On the said accident date, the defendant Jennifer Heather Olson was sixteen years of age, having been born on April 2, 1971.

3. On the said accident date, the defendant Jennifer Heather Olson ("Heather") was driving the said Volkswagen at approximately 11:55 P.M. on Yalecrest Avenue (1015 South in Salt Lake City, Utah)

at its intersection with 1900 East ("accident scene"). There was a "yield" traffic sign facing Valecrest Avenue at the said intersection, which sign required drivers on Valecrest Avenue to yield the right-of-way to persons on 1900 East.

4. At the said time and place described in paragraph 3 above, the said defendant Heather was driving under the influence of intoxicating beverages and was driving the Volkswagen with a blood-alcohol content of approximately .14 grams in violation of § 41-6-44, Utah Code Annotated, 1953, as amended.

5. A few minutes prior to the time and place described in paragraph 3 above, said defendant Heather was involved in a "hit and run" accident in an area less than one mile from the said accident scene. This hit and run involved another motorist by the name of Michelle Paxton. Heather was being pursued by Ms. Paxton through a residential neighborhood at the time she reached the accident scene.

6. At approximately 11:55 P.M. on the said accident date and at the accident scene, the plaintiff Myra L. Taylor was driving her 1984 Subaru 640 station wagon ("Subaru") in a northerly direction along 1900 East Street and in a careful and prudent manner.

7. On or about the said 11:55 P.M. on the said accident date and at the accident scene, the defendant Heather negligently, ("negligence") operated her Volkswagen thereby causing a collision with the Subaru being driven by the plaintiff. The specific grounds of negligence include, but are not necessarily limited to, the following:

(a) A failure to keep a proper lookout.

(b) Failure to yield the right-of-way to Myra Taylor who was driving her car on 1900 East.

(c) Driving too fast for existing conditions.

(d) Driving under the influence of intoxicating beverages with a blood-alcohol content of approximately twice the limit established by the Utah statutes for a presumption of driving under the influence of intoxicating beverages.

(e) Failure to take evasive action to avoid the accident.

(f) Failure to keep her motor vehicle under control.

8. As a sole, direct and proximate cause of Heather's negligence, Myra L. Taylor was then and there seriously and permanently injured. She suffered bruises, contusions, lacerations, shock, headache, muscle spasms, numbness in her joints and members, scarring, strains, fractures, and other damages and personal injury so as to render the plaintiff partially and permanently disabled for the balance of her life.

9. The plaintiff has suffered a loss of the quality of life and enjoyment of life she experienced prior to October 17, 1987, and has also suffered mental anguish, emotional pain and suffering and other mental and emotional trauma as more fully described in the evidence plaintiff provided at trial, some of which is discussed hereafter.

10. Prior to the time of the said accident on October 17, 1987, the plaintiff was in excellent health and vigor. She was a healthy mother who had given birth to and raised twelve (12)

children. She was accustomed to taking long trips as a family from coast-to-coast in the family car. She would drive the family car, pack the luggage and the food, work tirelessly and enthusiastically completing these tasks as a wife and mother. By comparison, the plaintiff is unable to ride in the family car at the time of trial without hunching her back and walking bent over because of back spasms and pain.

11. Prior to the time of the accident, the plaintiff enjoyed sports. She had played tennis, golf, bowling, horseback riding, motorcycling, hiking, waterskiing, camping, badminton, jumping on the trampoline with her children, and dancing. Since the accident, the plaintiff has been unable to participate in any of these activities and is by comparison an "invalid" with respect to her lifestyle prior to the accident.

12. The plaintiff's treating physician, King S. Udall, M.D., gave his written opinion in a letter dated approximately one (1) month prior to the trial that the plaintiff has sustained a ten percent (10%) permanent impairment and disability of her total person as a result of the accident. Dr. Udall stated that, as a result of the accident, Myra L. Taylor had to alter her life and career significantly. Because of the accident Dr. Udall states Ms. Taylor was unable to work on a full-time basis either lifting or providing the usual services of a registered nurse. As a result, she did not receive commensurate wages for the amount of time she missed as working half-time as she did as a full-time employee. Dr. Udall further states as a result of the accident the plaintiff has difficulty with her housework and cannot do routine housework

as before or do anything which involves heavy work using the upper extremities. After listening to the proffers of proof and the other evidence submitted at trial, the court concurs in the findings by Dr. Udall as more fully stated in his October 20, 1992 letter to plaintiff's counsel, James A. McIntosh, Esq..

13. As a sole, direct and proximate cause of the accident, the plaintiff has incurred a loss of wages for the period of time October 18, 1987, through October 5, 1991, in the amount of \$65,861.84. This finding is based on the affidavit of Margie Q. Richins, dated November 9, 1992. Ms. Richins is the Civilian Payroll Supervisor for the Veteran's Administration Medical Center where the plaintiff, Myra L. Taylor, worked for many years as a Registered Nurse.

14. The court finds it was reasonable and necessary for the plaintiff to take the depositions of certain persons, to wit, Kristi Bringhurst, Jenny Pia, Steve Ebert, Steve Jones, Scott Levy, James Levy, Mark Muir, Jeff Gertino, and Heidi Olson. The court further finds it was reasonable and necessary for the plaintiff to pay the said persons \$17.00 each to attend their depositions and to pay the amount of \$232.00 for the service of subpoenas on the said persons together with the further amount of \$374.80 to the court reporter for taking and transcribing the said depositions. The court finds this total of \$759.80 is a reasonable and necessary expense incurred by the plaintiff in this action and is to be taxed as part of the costs to be awarded to the plaintiff.

15. In addition to the said \$65,861.84 lost wages described in paragraph 13, the court finds the plaintiff has also incurred

the following reasonable and necessary special damages from the time of the accident through the time of the trial.

(a) Essential Services -- \$6,200.00.

(b) Medical Expenses -- \$5,178.75

(c) Expert Witness Fees to Frank Grant for Accident, Investigation and Reconstruction Services -- \$718.75.

16. In addition to the ten percent (10%) total person impairment and disability noted by Dr. King S. Udall as described above, the plaintiff also sustained injuries to her nose and teeth, as more fully described in medical reports from Dr. Bryce D. Allred, M.D., and from her dentists, Vee Boyd Hair, D.M.D., and Scott B. Hair, D.D.S..

17. The plaintiff was able to resume full-time employment at the Veteran's Administration Hospital on or about October 5, 1991. The said full-time employment necessitated a change in the type and nature of the work plaintiff had been performing prior to the accident and required a career change as more fully noted in Dr. Udall's medical report and in the plaintiff's own testimony.

18. The court finds Myra L. Taylor's physical, mental, and emotional disabilities will continue for the rest of her natural life and will interfere with her enjoyment of life as a wife and a mother, and will deprive her of the benefits and enjoyment of life which she had prior to the time of the accident as more fully set forth hereinabove in these findings. For all of these reasons, the court finds the plaintiff is entitled to \$125,000.00 as reasonable and full compensation for the general damages she has sustained from the time of the accident to the time of trial and

from the trial through the remainder of her natural life. In this connection, the court finds the plaintiff was born on January 28, 1943, and at the time of the accident, on October 17, 1987, was forty-four (44) years of age. The plaintiff had a life expectancy at the time of the accident of approximately thirty-six (36) years. The court takes judicial notice of the plaintiff's life expectancy which can also be verified in the legal encyclopedias such as the DESK BOOK in American Jurisprudence "Second Edition" Cumulative Supplement issued in April of 1991. The mortality tables are found in the said publication as Items numbers 159, 160, and 161.

19. The parties have submitted to the court a proposed "Stipulation" dated November 19, 1992, which provides for an assignment after judgment has been entered of the defendant's claim against their homeowners' insurance company for failure and refusal to defend the defendants in this instant lawsuit, for failure to pay the policy limits of \$100,000.00, for any excess judgment which might be entered in this action, and for any additional claims which the defendants might have against their homeowners' insurance carrier. As consideration for the said assignment, the plaintiff agrees not to execute on the defendants' personal property. The court finds the Stipulation is reasonable and adopts the terms of the said Stipulation as though they were fully set forth in these findings.

20. The court finds there has been no collusion between the plaintiff and the defendants with respect to the said Stipulation or with respect to assigning the defendants' rights to the plaintiff with respect to the defendants' homeowners' insurance

carrier. The parties have submitted correspondence between counsel for the plaintiff and counsel for the defendants as well as correspondence between counsel for the defendants and the homeowners' insurance claims office and the attorney for the homeowners' insurance company. The court finds the said documents have kept the homeowners' insurance company apprised of this legal action and have given the said company every chance to appear in this case and to represent the defendants herein. The court finds the said insurance company has not appeared in this action in any capacity whatsoever through the date of the trial.

21. The plaintiff withdrew her claim for punitive damages at the trial.

22. The court finds the plaintiff has proved all the allegations with respect to each of the claims in Counts 1, 2, 3, 4, and 5 of the plaintiff's complaint except for the claim for punitive damages against the defendant, Heather Olson, as set forth in Count 2 which claim the plaintiff withdrew at trial.

23. With respect to the allegations in Count 5 of the plaintiff's complaint, the court specifically finds the defendants, Ronald H. Olson, and his wife, Carol D. Olson, were negligent in failing to supervise and control the activities of their minor child Jennifer Heather Olson. The court finds the said parents knew the said minor child was taking the Volkswagen car from the parents' residence and had used it on several occasions prior to the time of the accident. The court also finds the parents knew that their daughter had consumed alcoholic beverages on occasions prior to the time of the accident and was in the habit of attending

parties with friends who the parents knew drank intoxicating beverages. The court further finds the parents had the duty and responsibility to prevent the minor child from taking the Volkswagen automobile which was uninsured and which was not registered, but the parents did not take the necessary steps and precautions to prevent the minor child from using the automobile, either on prior occasions or at the time of the accident on October 17, 1987. The court further finds the parents' lack of supervision and control over the minor child was the sole, direct, and proximate cause of the accident for the reasons stated in this paragraph and for the other reasons more fully described in Count 5 of the complaint, all of which the court finds are fully established by the evidence in this case.

24. Section 41-2-115, Utah Code Annotated, 1953, as amended, provides that any negligence of a minor younger than eighteen (18) years of age when operating a motor vehicle upon a highway is imputed to the person who has signed the application of the minor for a permit or license. The said section further provides the person signing the application for a permit or a license is jointly and severally liable with the minor for any damages caused by the negligent misconduct.

25. At the time of the accident as described above in these findings, the defendant Ronald H. Olson had signed the application for a permit or license of the defendant minor Jennifer Heather Olson. Pursuant to § 41-2-115 the said Ronald H. Olson is jointly and severally liable with Heather for any and all of the damages sustained by Myra L. Taylor as more fully described above in these

findings.

26. Section 41-2-116, Utah Code Annotated, 1953, as amended, provides that the owner of a motor vehicle causing or knowingly permitting a minor younger than eighteen (18) years of age to operate the vehicle upon a highway or a person who gives or furnishes the motor vehicle to the minor, are each jointly and severally liable with the minor for any damages caused by the negligence of the minor in operating the vehicle.

27. The defendant Ronald H. Olson is jointly and severally liable with his minor daughter Heather pursuant to § 41-2-116 for any and all damages negligently caused by the said minor to the person of Myra L. Taylor as set forth hereinabove in these findings.

28. The defendants Ronald H. Olson and Carol D. Olson are the parents of the defendant Jennifer Heather Olson. On October 17, 1987, the said parents were living in the same household with the said minor child. On the said date the said parents negligently permitted their minor daughter to use the Volkswagen automobile which was under the control of the said parents. At the said time, the parents knew or should have known their minor daughter intended to or was likely to use the motor vehicle and to conduct herself in an activity and in a manner as to create an unreasonable risk of harm to others.

29. The said parents had previously known prior to the said accident date about Heather's drinking intoxicating beverages; however, the said parents failed to take adequate precautions or to properly instruct their minor child about the dangers of driving

while under the influence of alcohol.

30. The parents further failed to take the necessary precautions to see their minor child would not take the Volkswagen automobile on the highways in an unregistered condition and without the vehicle insurance required by the statutes of the state of Utah.

31. As parents of the said minor child Heather, the defendants Ronald H. Olson and Carol D. Olson had a duty to supervise and control the conduct of the said minor child so as to prevent the minor child from negligently harming others or from so conducting herself as to create an unreasonable risk of bodily harm to others such as Myra L. Taylor.

32. The said parents knew or had reason to know they had the ability to control Heather and they knew or should have known of the necessity and opportunity for exercising such control. The parents knew the automobile did not contain current valid registration as required by Utah statutes nor was the Volkswagen automobile insured for personal injury or property damage to others as required by Utah statutes.

33. The parents knew the minor child had driven the car without registration and without insurance on previous occasions; however, the parents did not exercise the required supervision and control to stop Heather from using it on the accident date. Rather, they allowed the minor child to have access to the keys to the said automobile, to install improper license plates on the said automobile, and to otherwise be able to use and operate the said automobile.

34. The parents also knew that on prior occasions as well as on the accident date the minor child Heather had been using license plates from her older sister Heidi's automobile, the said use being in violation of the state statutes pertaining to motor vehicles. Notwithstanding this knowledge, the said parents did not ensure Heather would discontinue this practice and the parents thereby permitted the minor child to take the Volkswagen on the public streets and highways in the state of Utah with an improper registration and without adequate insurance.

35. The parents knew the minor child had consumed alcoholic beverages prior to the accident date. The parents also knew the minor child consorted with other friends and acquaintances who were accustomed to drinking alcoholic beverages when they were together.

36. Notwithstanding this knowledge of Heather's drinking habits, the parents allowed Heather to have access to the Volkswagen which had invalid license plates, lacked adequate insurance, and under circumstances where the parents knew or should have known Heather was attending a party where intoxicating beverages were going to be consumed and knew or should have known that Heather may be driving the motor vehicle after consuming the said intoxicating beverages.

37. The parents had the ability to control Heather's access to and use of the said Volkswagen, and also knew the necessity for exercising the said control; however, they neglected to so control or supervise Heather to prevent her from using the said Volkswagen under the circumstances set forth in Count 5 of the plaintiff's complaint.

38. The parents were negligent in failing to retain sufficient control and discipline over their minor daughter Heather and in failing to provide adequate supervision for Heather to insure Heather would not take the Volkswagen automobile under the circumstances set forth in the complaint.

39. This lack of control and supervision on the part of the parents constitutes negligence on their part.

40. The said parent's negligence contributed as a proximate and direct cause to the accident on October 17, 1987, as described more fully hereinabove in these findings. As a direct and proximate result of this negligence on the part of the parents, the plaintiff sustained the damages which she claims in the preceding Counts in this complaint.

CONCLUSIONS OF LAW

1. The plaintiff is entitled to judgment against the defendants and each of them jointly and severally on Counts 1, 3, 4, and 5 of the plaintiff's complaint for the amount of \$77,959.34 special damages and the amount of \$125,000.00 general damages, together with the amount of \$834.80 as costs.

2. The Stipulation of the parties dated November 19, 1992, should be approved by the court and is by reference incorporated into these conclusions as though it were fully set out herein.

DONE IN OPEN COURT THIS 27TH DAY OF JANUARY 1993.

BY THE COURT



TIMOTHY R. HANSON
District Court Judge

Barbara Carls
attest

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of January 1993 a true and correct copy of the above and foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW was hand delivered to the following:

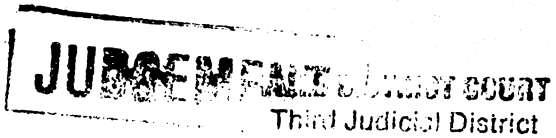
Michael N. Martinez, Esq.
4479 Gordon Lane, Suite 100
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JAMES A. MCINTOSH

EXHIBIT "29"

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JAN 27 1993

Quintin Thompson
SALT LAKE COUNTY

IN THE DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

MYRA L. TAYLOR

Plaintiff

v.

RONALD H. OLSON, CAROL D.
OLSON, and JENNIFER HEATHER
OLSON

Defendants

FINAL JUDGMENT

2180497

1-29-93-807am.

Civil No. 900907125PI

(Judge Timothy R. Hanson)

The above-entitled matter, having come on regularly for trial on Thursday, November 19, 1992, before the Honorable Timothy R. Hanson, Judge of the above-entitled court, hearing this case without a jury; the plaintiff, Myra L. Taylor, being present in court and represented by the law firm of James A. McIntosh & Associates P.C., a Utah professional law corporation, appearing through counsel, James A. McIntosh; the defendants, Ronald H. Olson, Carol D. Olson, and Jennifer Heather Olson being present in court and being represented by counsel, Michael N. Martinez; the court having heretofore entered a Pretrial Order establishing the procedures for presenting evidence at the time of the trial; said Pretrial Order being incorporated herein by reference and being made a part hereof; the court having received the various proffers

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of proof, affidavits, medical reports, and other evidence submitted by the plaintiff in support of the allegations raised in each of the five (5) Counts of her complaint; the court having taken the proffer of testimony from the defendants, Ronald H. Olson and Carol D. Olson, said proffers being made by their counsel, Michael N. Martinez, and approved by the said Olsons; the court having published the deposition of all persons heretofore deposed in this action; the court having reviewed the said proffers of proof, affidavits, medical reports, and other evidence and being fully advised in the premises; the court heretofore entered its findings of fact and conclusions of law, which are by reference incorporated herein and made a part hereof;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS A FINAL JUDGMENT IN THIS MATTER AS FOLLOWS:

1. The plaintiff, Myra L. Taylor, is hereby awarded judgment against the defendants, Ronald H. Olson, Carol D. Olson, and Jennifer Heather Olson, and each of them jointly and severally, on Counts 1, 3, 4, and 5 of the plaintiff's complaint for the amount of \$77,959.34 special damages, and \$125,000.00 general damages together with the plaintiff's costs incurred herein in the amount of \$834.80.

2. The court approves and adopts the Stipulation signed by the parties on November 19, 1992.

DONE IN OPEN COURT THIS 27TH DAY OF JANUARY 1993.

BY THE COURT

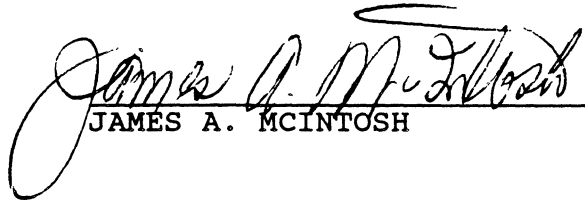

TIMOTHY R. HANSON
District Court Judge

Barbara Carls
attest

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of January, 1993, a true and correct copy of the above and foregoing FINAL JUDGMENT was hand delivered to the following:

Michael N. Martinez, Esq.
4479 Gordon Lane, Suite 100
Salt Lake City, UT 84107


JAMES A. MCINTOSH